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THE LAW OF TRADE UNIONS IN
ENGLAND AND SCOTLAND.

By W. GUTHRIE, ADVOCATE.

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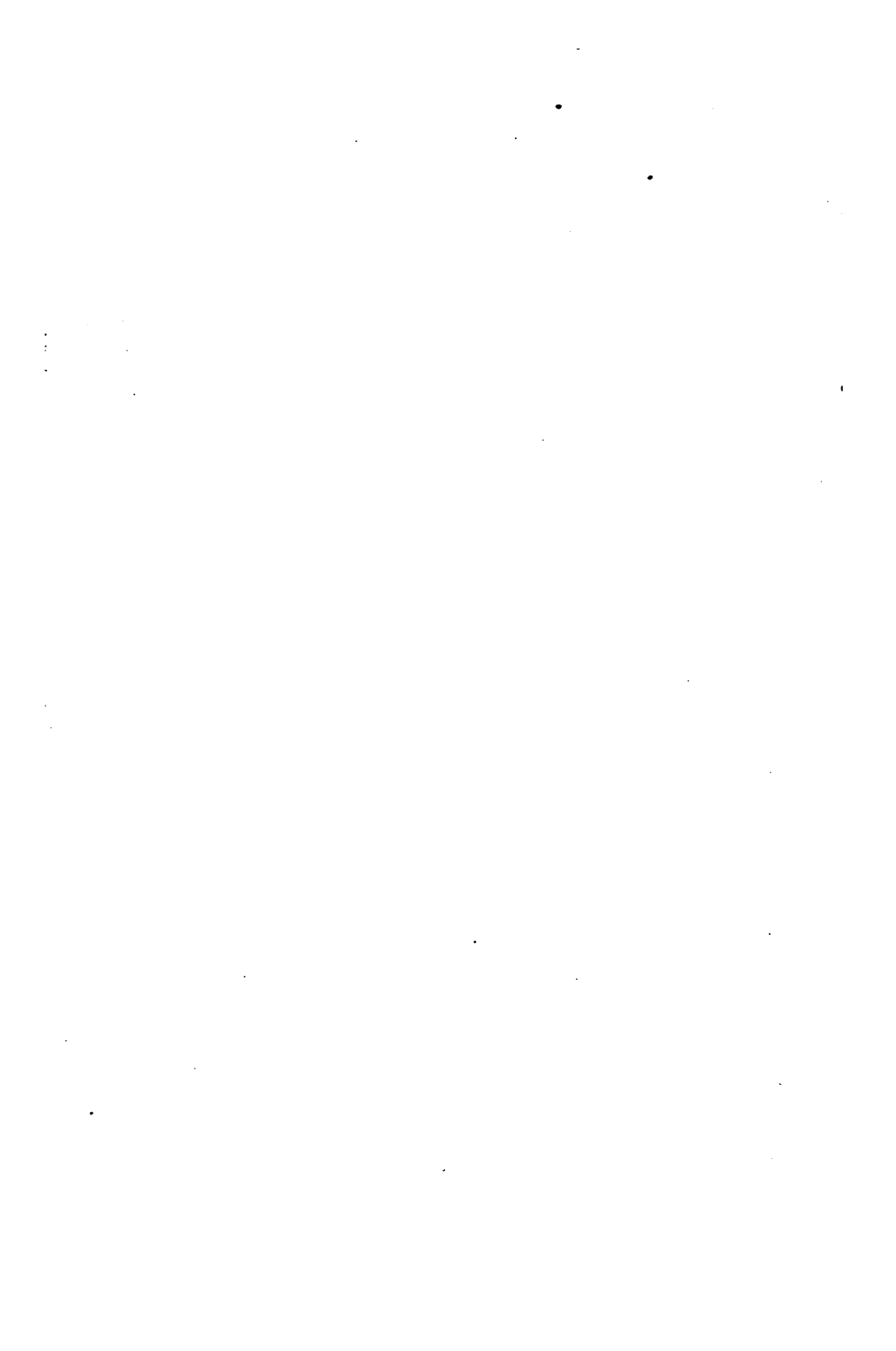
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THE LAW OF TRADE UNIONS.

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THE LAW OF TRADE UNIONS IN ENGLAND AND SCOTLAND

UNDER THE
TRADE UNION ACT 1871.

BY
WILLIAM GUTHRIE,
ADVOCATE,
REGISTRAR OF FRIENDLY SOCIETIES AND TRADE UNIONS IN SCOTLAND.



EDINBURGH: EDMONSTON & DOUGLAS.
1873.



P R E F A C E.

A SHORT experience as Registrar in Scotland under the Trade Union Act of 1871 has shown me that many Trade Unions have difficulty, not only in bringing their rules into conformity with that Act, but in framing rules that can be safely and easily worked at all. I have therefore endeavoured to produce such a manual of the law affecting such societies in their civil rights, as may be useful to their managers and members, as well as to lawyers. It is hoped that the specimen rules, which are to a great extent taken from those of existing societies, will assist in framing and revising the constitutions of new Trade Unions.

I have not dealt with the Criminal Law affecting employers and employed, which does not properly form part of the Law of Trade Unions, and which besides may soon undergo modification in some particulars, but I have for the convenience of those who are likely to use the book, added the Criminal Law Amendment Act in the Appendix.

Doubtless the increasing importance of Trade Unions, the legitimate successors of the Gilds of the Middle Ages to which modern civilization is so deeply indebted, will ere long require a much more elaborate treatise on their legal relations. In the

meantime this little book will, it is hoped, supply a pressing want, and save Trade Societies and their members from embarrassment and litigation.

Employers may be reminded that the law under the Act of 1871 is applicable to the Unions or Leagues which they may form.

I have to acknowledge my obligations to Sheriff Barclay, LL.D., Perth, Mr. Robert Campbell, Advocate and Barrister at Law of Lincoln's Inn, and to Mr. Charles Scott, Advocate, Edinburgh, for their kindness in reading the proof sheets and suggesting corrections and improvements.

W. G.

8 FETTES ROW,
EDINBURGH, *October* 1878.

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LAW OF TRADE UNIONS UNDER THE TRADE UNION ACT, 1871.

§ 1. INTRODUCTORY.

TRADE unions are "associations of workmen for mutual assistance in securing generally the most favourable conditions of labour."¹ They are not possessed of any of the privileges of corporations, and in their general characteristics differ from ordinary partnerships or associations only in so far as the rules applicable to these are modified by the will of their members, or in a few respects by the common law, in order to meet the requirements of bodies that have a numerous and fluctuating membership. A trade union is the creature of contract. Assuming its purposes to be lawful, its constitution, as contained in its rules, is like a partnership agreement, for breach whereof the remedy in England is mostly in Chancery. Members of lawful societies have the same rights to the property of the Society as other joint owners have to joint property, or as other beneficiaries have with respect to the property held in trust for them.

"But although such rights exist in law, it is difficult in practice to enforce them. In most unions the members are being changed perpetually by outgoing and incoming, while no provision has been made for transmission of rights of property."² It is evident, moreover, that in the case of such extensive associations, the number of the individuals composing them makes it difficult for the ordinary

¹ Messrs. T. Hughes and F. Harrison in Final Report of Trade Union Commission, 1869, p. xli.

² Sir Wm. Erle, *Law Relating to Trade Unions*, 3.

tribunals to deal with their civil rights satisfactorily. Until 1871 it was practically impossible for a trade society to sue a member or for a member to sue a society: a society could maintain no action against third parties; the Courts cannot yet be conveniently called in to adjust the rights of members at its dissolution; and each member still incurs an indefinite liability for its debts.¹

In England there was a technical difficulty in punishing violations of the rights of property belonging to a union by its own members or officers, arising from their being themselves joint owners.² In Scotland this difficulty did not and does not exist in the case of any lawful union.³

The chief difficulty, however, in enforcing the rights of trade unions and of their members has arisen from the nature of the purposes for which they are formed. At common law every person has a right to perfect freedom in dealing with his own labour or his own means or capital according to his will, and every obstruction to the exercise of this right, so as to cause damage to him, is unlawful, even if it be created by means not otherwise unlawful.⁴ Hence, both in England and in Scotland, combinations by workmen for the purpose of raising the rate of wages were held to be "unlawful," and there have been decisions afterwards overruled in Scotland, and in England an opinion confirmed by some show of judicial authority, that they were punishable as crimes at common law.⁵ We

¹ *Way v. Kay*, June 5, 1828, 6 S. 914. Clark on Partnership, 544. *Macmillan v. F. Ch.*, 9th July 1862, 24 D. 1282. *Attwood v. Small*, 7 B. & C. 390. *Bramah v. Roberts*, 3 Bing. N. C. 963. *Todd v. Emly*, 10 M. & W. 505.

² *Sir W. Erle, l.c.* Remedied by 31 & 32 Vict. c. 116.

³ *Hume's Com.* ii. 200, etc. *Smith v. Lothian*, March 21, 1862, 4 Irv. 170.

⁴ *Sir W. Erle, Law of Trade Unions*, 12.

⁵ *R. v. Ridgway*, 5 B. & Ald. 527. The able and exhaustive examination of the subject by Mr. Wright in his recent work on "The Law of Criminal Conspiracies" (Butterworths, 1873), shows "that there is not sufficient authority for concluding that before the close of the eighteenth century there was supposed to be any rule of common law that combinations for controlling masters or workmen were criminal, except where the combination was for some purpose punishable under a statute expressly directed against such combinations, or was for conduct punishable independently of combination. If such a rule is established by the cases decided since the passing in 1825 of the 6 Geo. IV. c. 129, this would seem to be a modern instance of the growth of a crime at common law by reflexion from statutes, and of its survival after the repeal of those statutes, somewhat in the same manner in which combinations for certain kinds of frauds continued to be criminal after those frauds had ceased to be punishable apart from combination."

have not now however to consider the character and position of trade unions and their members before the criminal law, except so far as we shall afterwards have to notice how the frauds of office-bearers and others may be punished.

Cases in Hume's *Com.* i. 493-497. In 1755 the journeymen woolcombers of Aberdeen formed themselves into a society. "Though their seeming view," says the Reporter (Lord Kames), "was to provide for their poor; yet under that pretext several resolutions were made cramping trade, and tending to make them independent of their employers." A complaint by the procurator-fiscal, brought in the Baillie Court of Aberdeen, was removed by advocacy to the Court of Session. It was there held at first, upon a consideration of the original plan of the society and of the still subsisting rules, "that such combinations of artificers, whereby they collect money for a common box, inflict penalties, impose oaths, and make other bye-laws, are of a dangerous tendency, subversive of peace and order, and against law," and the Court prohibited the defenders from continuing to act under the combination or society in future, or entering into any new society." On a reclaiming petition, the judgment was adhered to, so far "as it finds the society to be of dangerous tendency, and consequently *contra bonos mores*, but remitted to the Lord Ordinary to hear parties, whether they might not be permitted, under proper regulations, to continue to contribute sums for maintaining their poor."—*Procurator-Fiscal v. Woolcombers in Aberdeen*, 1762, M. 1961. In the same year, another case of a similar kind occurred, and is also reported by Lord Kames, whose language shows the feeling with which combinations of workmen were then regarded. The effect of it was that, in an advocacy, the Court approved of a judgment of the magistrates of Edinburgh, finding "that the defenders, and other journeymen tailors of Edinburgh, are not entitled to an hour of recess for breakfast; that the wages of a journeyman tailor in the said city ought not to exceed one shilling per day; and that if any journeyman tailor not retained or employed shall refuse to work when employed by a master on the foresaid terms, unless for some sufficient cause to be allowed by the magistrates, the offender shall upon conviction be punished in terms of law." This apparently arbitrary proceeding was justified on the ground that "arts and manufactures, which are necessary to the wellbeing of society, must be subjected to rules, otherwise it may be in the power of a few individuals to do much mischief. If the bakers should refuse to make bread, or the brewers to make ale, or the colliers to provide coals, without being subjected to any control, they would be masters of the lives of the inhabitants. To remedy such an evil there must be a power placed somewhere; and accordingly this power has long been exercised by magistrates of burghs and justices of peace, under review of the sovereign court. The tailors by forbearing to work cannot do the mischief so suddenly; but people must be clad, and if there be no remedy against the obstinacy of the tailors, they may compel people to submit to the most exorbitant terms." With regard to the propriety of the regulations, it was observed that the power to fix wages was admitted; and "it is of no purpose to fix wages without also fixing the number of working hours; and it is to no purpose to fix either if the defenders have the privilege to work or not at their pleasure."—*Tailors of Edinburgh v. Their Journey-men*, 1762, M. 7862. See also *Corporation of Master Shoemakers in Edinburgh v. Marshall and others*, 1799, M. 9573; *Hutchison's Justice of Peace*, ii. 179; *Scott v. Smith*, 796, M. 7625; 1798, 4 Pat. Ap. 17 (Combination of postmasters to raise the rate of hires).

§ 2. AGREEMENTS IN RESTRAINT OF TRADE.

There is a general rule in the law of England, that "all restraints of trade, which the law so much favours, if nothing more appear, are bad," and cannot be enforced by any court of law or equity.¹ A similar rule also obtains in the law of Scotland.²

§ 3. THE LAW BEFORE 1871.

The applications of this common law doctrine to contracts tending to restrain the freedom of trade in respect to labour have not been numerous, for from an early date statutes were passed for the purpose of regulating the rate of wages, and preventing combinations for the purpose of raising it. In the case of *Hilton v. Eckersley*³ however, which occurred after the repeal of the combination laws, the common law doctrine was fully discussed, and it was held that a bond into which eighteen master manufacturers⁴ had entered to carry on or cease to carry on business according to the resolutions of the majority was illegal and void. It was said, "The bond is framed to enforce a contract by which the obligors agree to carry on their trade not freely, as they ought to do, but in conformity to the will of others; and this not being for a good consideration is contrary to public policy. If a bond of this sort between masters is capable of being enforced at law, an agreement to the same effect amongst workmen must be equally legal and enforceable, and so we should be giving legal effect to combinations of workmen for the purpose of raising wages, and make their strikes capable of being enforced at law. The Legislature have been content to make such strikes not punishable, and certainly never contemplated them as being the subject of enforcement by a suit at law."⁵

¹ Per Willes, C. J., in *Master of Gunmakers v. Fell*, Willes, 388, *Mitchel v. Reynolds*, 1 P. W. 181, and 1 Smith's L. C. 356, *seqq.*

² *Stalker v. Carmichael*, 1735, M. 9455. *Watson v. Neuffert*, July 14, 1863, 1 Macph. 1110. Bell's *Princ.* § 40.

³ 6 E. and B. 47, 66: 24 L. J., Q. B. 359.

⁴ See *Corporation of Master Shoemakers*, *supra*.

⁵ Baron Alderson in delivering the judgment of the Court.

Prior to 1824 all concerted proceedings on the part of workmen for the purpose of raising the rate of wages were punishable both at common law and under the "Combination Acts," which had been passed both in England and Scotland; and an association for raising funds to support men engaged in a strike, or for any of the ordinary purposes of a Trade Union, was an unlawful association, the unlawfulness of which inhered in the very purpose of its formation. It was therefore not entitled to any protection whatever from the law.

In that year the Act 5 Geo. IV. c. 95 exempted from punishment the parties to any such combination not attended with violence.

But this Act was repealed in the following year by 6 Geo. IV. c. 129, which was intended to have a more limited operation in regard to the liberties of Trade Unions. It exempted from punishment persons meeting together for consulting upon and determining the rate of wages which the persons present at the meeting or any of them should demand for their work, or the hours during which they should work; and persons entering into any verbal or written agreement among themselves for the purpose of fixing the rate of wages or prices which they or any of them should require or demand for their work, or the time for which they should work.¹ For these purposes Trade Unions could thereafter exist and collect funds by voluntary contributions with impunity. Trade Unions or societies whose purposes and practice did not exceed the limits specified by the Act ceased to be criminal; and it may be said perhaps that they also became entitled to the protection of the criminal law against persons defrauding them or withholding their funds, provided they could overcome the technical difficulties in the way of their prosecuting such persons.² The latter point however was never clearly decided, and indeed, as we shall see, the law was generally understood to be to the opposite effect.

But the case of *Hilton v. Eckersley* shows that this Act did not remove the illegality (in a different sense) of such societies arising from their rules being "in restraint of trade." The members of

¹ Fraser on the *Law of Master and Servant*, 315.

² *Reg. v. Dodd*, 18 L. T., N. S. 89; *Reg. v. Stainer*, L. R., 1 C. C. 230, 39 L. J., Mag. Ca. 54.

Trade Unions ceased to be liable to penal consequences, except for the violence, intimidation, and threats and other criminal acts described in the third section of the Act; but they obtained no relief from the civil consequences authoritatively deduced from the theory, that their purposes were contrary to public policy and unlawful.

§ 4. THE LAW BEFORE 1871 (*continued*)—*Hornby v. Close*.

Notwithstanding the dissent of Mr. Justice, afterwards Lord Chief-Justice Erle, in *Hilton v. Eckersley*, and the disapprobation of respected legal authorities, such as Mr. John William Smith,¹ that principle received a new application in *Hornby v. Close*.² There a branch of the United Order of Boilermakers and Iron Ship-builders had deposited its rules with the Registrar of Friendly Societies pursuant to the 44th section of the Friendly Societies' Act, 18 & 19 Vict. c. 63. That section gives to societies established "for any purpose which is not illegal," upon so depositing a copy of their rules, certain of the privileges of Friendly Societies, and among others that of proceeding in a summary way before Justices against officers or other persons withholding or misapplying their funds, books, or effects. The rules of the Society contained provisions for benefits to its members of the kind usual in Friendly Societies, but there were also rules prohibiting piece-work, for giving aid to members losing their employment through trade disputes after being sanctioned by the executive of the society, and for other trade purposes. It was held that, "although those who become parties to these arrangements may not be criminally responsible, and may obey any such rules and regulations which they think fit to impose upon themselves; yet these rules being in restraint of trade are by the law of the land illegal, and cannot be enforced. The Society is not established for a friendly object within the meaning of the Act, and it cannot be said to be established for a purpose which is not illegal so as to bring it within the terms of section 44."³

¹ Smith's Leading Cases, I. 350.

² 10 Cox C. C. 393; 36 L. J., Mag. Ca. 43; L. R. 4 Q. B. 602.

³ Per Cockburn, C.J.

§ 5. THE LAW BEFORE 1871 (*continued*)—*Farrar v. Close*.

A similar question arose under the 44th section of the Friendly Societies' Act with regard to the Amalgamated Society of Carpenters and Joiners;¹ and the Court of Queen's Bench was equally divided in opinion as to the effect of the Society's rules. The Lord Chief-Justice (Cockburn) and Mr. Justice Mellor agreed in holding that the Society, "though in the main a Friendly Society, was, with reference to some of its objects, practically a Trade Union," and that it therefore came within the principle of the decision in *Hornby v. Close*. The rules on which this opinion were founded appeared to these learned Judges, in the light of certain evidence which had been given, to make the funds of the society available for the support of strikes: a purpose, the illegality of which, in the sense of the 44th section of the Friendly Societies' Act, they held to be settled by *Hornby v. Close*.

On the other hand it was held by Hannen and Hayes, JJ., that there was not evidence to show that the funds of the society had been applied for illegal purposes, unless indeed it was to be held that every strike is illegal; and Mr. Justice Hannen was clearly of opinion that strikes are "not necessarily illegal."² Mr. Justice

¹ *Farrar v. Close*, L. R. 4 Q. B. 602; 38 L. J., M. C. 132.

² "A strike is properly defined as a 'simultaneous cessation of work on the part of the workmen,' and its legality or illegality must depend on the means by which it is enforced, and on its objects. It may be criminal, as if it be part of a combination for the purpose of injuring or molesting either masters or men; or it may be simply illegal, as if it be the result of an agreement depriving those engaged in it of their liberty of action, similar to that by which the employers bound themselves in the case of *Hilton v. Eckersley*; or it may be perfectly innocent, as if it be the result of the voluntary combination of the men for the purpose only of benefiting themselves by raising their wages, or for the purpose of compelling the fulfilment of an engagement entered into between employers and employed, or any other lawful purpose. On this point, I would refer to the recent memorandum of Sir W. Erle on the law relating to Trade Unions, a work which it would be unbecoming in me to praise; but which appears to me to contain a complete exposition of the principles of law applicable to this subject. That learned writer says (p. 23), 'As to combinations, each person has a right to choose whether he will labour or not, and also to choose the terms on which he will consent to labour, if labour be his choice. The power of choice in respect of labour and the terms which one person may exercise and declare singly, many after consultation may exercise jointly, and they may make a simultaneous declaration of their choice, and may lawfully act thereon for the immediate purpose of obtaining the required terms; but they cannot create any mutual obligation having the legal effect of binding each other not to work or not to employ un-

Hayes substantially agrees, and says very succinctly: "No doubt the trade of an employer is restrained when workmen decline to take the wages which he is willing to give; but it must be remembered that the men are traders as well as the employers, and it would be an odd way of promoting freedom of trade to hold it an illegal purpose on their part to endeavour out of their own savings to put themselves in a better position to get what they think a fair price for their labour."

§ 6. THE LAW BEFORE 1871 (*continued*).

These two cases established the futility of the attempt to obtain less upon terms allowed by the combination.' The foregoing passage clearly defines the dividing line between what is legal and what is illegal; and the evidence in this case shows only that the society permits its members to draw upon the funds to which they have contributed in the event of their being out of work for some purpose not shown to be illegal, and which the society considers meritorious, while there is a total absence from the rules and practice of the society of anything tending to impose an obligation or coercion on its members" (per Hannen, J.).

The learned Judge said further: "By the expression that a thing is 'contrary to public policy,' I understand that it is meant that it is opposed to the welfare of the community at large. I can see that the maintenance of strikes may be against the interest of employers, because they may be thereby forced to yield at their own expense a larger share of profits or other advantage to the employed; but I have no means of judicially determining that this is contrary to the interests of the whole community, and I think that in deciding that it is, and therefore that any act done in its furtherance is illegal, we should be basing our judgment not on recognized legal principles, but on the opinions of one of the contending schools of political economists. The cases which were referred to in argument do not appear to me to apply to the present case. In *Hilton v. Eckersley* it was held that employers could not legally bind themselves to carry on business as a majority of their body should direct. In *Hornby v. Close*, on the other hand, it was held that the men could not legally bind themselves not to seek work at a shop where disputes connected with the trade had arisen, or not to encourage or to instruct a labourer contrary to the rules of the society, or not to use their influence to procure employment for a non-member; and that a society whose rules were designed to enforce such engagements was established for an illegal purpose. In this case no obligations in restraint of trade are imposed by the rules, and, for the reasons I have given, I think that there is no evidence that the rules are applied in restraint of trade."

This confirms Mr. Smith's remark (L.C. I. 350) upon *Hilton v. Eckersley*, that it avows the doctrine "that a contract may be void as contrary to public policy, although not violating any rule of law . . . The law upon this subject is, it must be confessed, in an unsatisfactory state, and there seems but too much ground to fear that, unless checked by a firm determination to uphold men's acts when not in violation of some known rule of law, and to treat decided cases having a contrary tendency as exceptional, it may degenerate into the mere private discretion of the majority of the Court as to a subject of all others most open to difference of opinion, and most liable to be affected by changing circumstances."

the summary remedies of the Friendly Societies' Act for societies whose main objects were those of Trade Unions, at least when such purposes were disclosed in their rules.¹ Their effect however was generally supposed to be still more extensive, and to deprive such societies of all protection to their property from the criminal law. The judgment on *Hornby v. Close* certainly does not say so. It only amounts to this, that certain of the rules were illegal in the sense that they could not be enforced in any Court of law. It was not said that others of the rules might not be enforced; still less that the property belonging to the Society might be stolen or embezzled without risk of punishment by the ordinary procedure of the criminal law; but only that the rules disclosed such purposes in restraint of trade as to bring the society within the category of those established for an illegal purpose in the sense of the Friendly Societies' Act.² It certainly does not affirm what the popular opinion supposed it to do. Whether that opinion as to the law was in itself correct or not has been doubted, and neither Sir William Erle nor the cases cited in the notes to this and the next section solve the doubt, which however has since been removed by Statute.

§ 7. THE ACT OF 1869.

By the temporary Act 32 & 33 Vict. c. 61 it was enacted, that associations having rules, agreements, or practices as to the terms on which their members would consent to employ or be employed, should not be deemed for the purposes of the 24th section of the Friendly Societies' Act, 1855, for the punishment of frauds and impositions, to be illegal or not to be friendly societies within the meaning of the 44th section of the Act, by reason only that any of their rules, agreements, or practices might operate in restraint of trade, or that they were partly for objects other than those of the Friendly Societies' Acts. This Act was repealed by the Act which

¹ It is an opinion, countenanced by Sir W. Erle (pp. 5, 79), that if societies were to remove the illegality which is apparent on their rules, they might, under the decision in *Farrar v. Close*, still have obtained the benefit of the 44th section of the Friendly Societies' Act. But that case does not clearly bear out that conclusion.

² See per Blackburn, J., in *Reg. v. Stephenson*, L. R. 7 Q. B. 741, 746; 41 L. J. Q. B. 556.

we are about to consider, which however is declared not to affect (1) anything duly done or suffered under the temporary Act; (2) any right or privilege acquired or liability incurred under it; (3) any penalty, forfeiture, or other punishment incurred for an offence against it; or (4) the institution of any investigation or legal proceeding or other remedy for ascertaining, enforcing, recovering, or imposing any liability, penalty, forfeiture, or punishment under it (34 & 35 Vict. c. 31, s. 24).

The case of *Reg. v. Stainer*¹ occurred in the period intervening between the passing of the temporary Act, and its repeal by the Trade Union Act, 1871. It was there held that a society (not enrolled and not having its rules deposited under the Friendly Societies Act), certain of whose rules were in restraint of trade, and therefore void, was not an illegal society in the sense that it was disabled from prosecuting a servant for embezzlement. The Court upon a case stated from Quarter Sessions, held, 1. That while the particular rules being in restraint of trade were void in conformity with *Farrar v. Close* and *Hilton v. Eckersley*, it did not follow that the society was formed for criminal purposes, or for such illegal purposes as deprived it of the protection of the criminal law. "The main purposes of a society must be criminal before the question of criminality could arise." 2. That although 32 & 33 Vict. c. 61 had reference only to societies registered or depositing their rules under the Friendly Societies' Acts, it amounted to a clear declaration by the Legislature that such a society as this, *i.e.* an ordinary Trade Union, should have no defect in its title to property, for that it would be preposterous that it should be able to prosecute before Justices, and yet not be able to indict at the assizes.²

§ 8. THE LAW SINCE 29TH JULY 1871—DEFINITION OF TRADE UNIONS.

I shall now consider the law as it stands under the Act of 1871;

¹ (1870) 39 L. J., Q. B. 54, L. R. 1 C. C. 230. See *Reg. v. Dodd*, 18 L. T., N.S. 89.

² Per Cockburn, C.J.

employing as far as possible the words of the Statute, and adding such explanations and illustrations as appear necessary.

The bodies to which this Act applies are defined in the explanatory clause as follows:—

“The term Trade Union means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade” (sec. 23).

And this definition must be read in connection with the 3rd and 4th sections, the enacting clauses earliest in order, which declare—

“2. The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise.

“3. The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust.”

It is certainly very awkward to define a Trade Union by a quality which it has ceased to possess by virtue of these two enacting clauses in the same Act. But the reason for doing so seems to be, that this Act is intended to be supplementary to the Friendly Societies Acts; and that it seeks to give a definition of the term trade union which shall clearly avoid placing any trade society beyond the scope of these Acts if it would otherwise have come within them. Such a definition is quite in harmony with the patchwork method of ordinary British legislation; but in the present case it may be supposed also to mark, in common with other provisions in the Act, the temporary and transitional character of the Act in which it occurs. Trade Unions are not yet admitted to equal privileges with other societies which have some of the same purposes, are composed to a great extent of the same classes of the people, and differ only in not being directed to “protective” trade

purposes. Nothing could more clearly show the tendency of the law to remove the distinction founded on this kind of purposes, than to formulate the definition in question, not according to the objects of the society, but according to the illegality formerly attaching to those objects. It is to say in effect: Trade societies had better be registered under the Friendly Societies Acts. Let them be so wherever they can; but where they can't, we shall enable them, *until we think better of it*, to get themselves registered and protected by the law under a different name, and with inferior privileges.¹

§ 9. TRADE UNIONS NOT CRIMINAL.

Section 2, unlike the other parts of this Act, deals with the criminal law relating to Trade Unions. It enacts that—

“The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such Trade Union liable to criminal prosecution for conspiracy or otherwise.”

In treating of the former law as to the civil disabilities of Trade Unions, we used the word unlawful in a sense nearly equivalent to “not enforceable by the tribunals.” In this clause it means “punishable by the law.” In the one case it is applied to a purpose or an agreement which the law cannot recognise, and which it will not aid the parties interested in effecting. In the other case it is applied to an act, or to the carrying out of a purpose, which the law regards as criminal. The Statute law by which the ordinary purposes and practices of Trade Unions were made criminal, was repealed or rather amended and modified by the

¹ This was not perhaps the conscious meaning of the legislature. The definition in question was introduced in the House of Lords. By the Bill, as it passed the House of Commons, a Trade Union was defined to mean “any combination, whether temporary or permanent, for determining directly or indirectly the conditions under which persons shall employ or be employed in any trade or employment, or under which any trade or employment shall be carried on;” and it was provided that the term “Trade Union” should not include—

- “1. Any agreement between partners as to their own business;
- “2. Any agreement between an employer and those employed by him as to such employment;
- “3. Any agreement in consideration of the sale of the goodwill of a business or of instruction in any profession, trade, or handicraft.”

Act 34 & 35 Vict. c. 32, originally intended to be part of the Act which we are considering. But this clause removes any criminal illegality which might have attached to these purposes in virtue of the common law right to freedom in trade. It was very far from clear how far and to what purposes of Trade Unions this criminality extended; but as it is now removed it is unnecessary to discuss the question.¹

§ 10. REMOVAL OF DISABILITIES DEPENDING ON THE DOCTRINE OF RESTRAINT OF TRADE.

Under section 3, which provides that—

“The purposes of any Trade Union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust,”

it is now competent for a trade society to avow in its rules its intention to regulate the relations between its members and their employers and fellow-workmen, or for a society of employers to aim at similar ends, without incurring the risk of any general disability in consequence of these purposes being for the “restraint of trade.” This enfranchising clause, however, is clogged with some restrictions which make it doubtful what rights a Trade Union now has beyond those expressly conferred by the Act.

§ 11. CONTINUATION OF SOME FORMER DISABILITIES.

The 4th and 5th sections are carefully framed for the purpose of perpetuating the disabilities of Trade Unions at common law, and of leaving them where they were, except so far as certain special rights and powers may be acquired by them by registration under this Act. Nothing in the Act is to enable any Court to entertain any legal proceeding instituted in order directly to enforce or recover damages for breach of—

¹ See *Hilton v. Eckersley*; *Hornby v. Close*; *R. v. Stainer*, etc., *citt.*; also *Walsby v. Anley*, 30 L. J., Mag. Ca. 121; Sir W. Erle, *Trade Unions*, 31; Wright on *Conspiracy*, § 14; *ante*, §§ 2, 5.

- (1) An agreement between the members of a Trade Union as such concerning the conditions on which they shall or shall not sell their goods, transact business, employ or be employed ;
- (2) An agreement for the payment by any person of a subscription or penalty to a trade union ;
- (3) An agreement for the application of the funds (a) to provide benefits to members, or (b) to furnish contributions to non-members in consideration of their acting in conformity with the rules or resolutions of such Trade Union, or (c) to discharge a fine imposed by any Court of Justice ;
- (4) An agreement between one Trade Union and another ; or
- (5) Any bond to secure the performance of any of the before-mentioned agreements (sec. 4).

But nothing in the section shall constitute any of the above-mentioned agreements unlawful (*ib.*).

It thus appears that the Act leaves Trade Unions subject to the rules of the common law, whatever they may be, with regard to all the direct enforcement of the matters mentioned in the 4th section. Hence (1), the authorities already cited seem to show that every, or almost every agreement falling under the first head of this section remains incapable of being directly enforced, as being in restraint of trade. (2) The opinions of the Court in *R. v. Stainer* (*cit.* p. 10, *supra*) indicate a leaning to the view that the illegality of any particular rules vitiates only those rules, and that the rules whose purpose is separable from the tainted rules are valid and enforceable. It is probable that, while rules of the description specified in the previous clause are invalid, effect may be given, in virtue of section 3 of this statute, to a claim for a subscription in respect of an insurance or sick benefit. This seems to be quite clear, if the insurance or benefit fund be distinct from the fund for trade purposes. The trustees of a registered society are by section 9 enabled to bring or defend actions relating to "the property, right, or claim to property of the Trade Union;" and although nothing in the Act is to enable any Court to entertain any legal proceeding for the recovery of such subscription, yet it appears absurd to recognise Trade Unions, to give them a status and powers to hold property and vindicate their claims to property, if in

regard to their most important source of income, and one not directly tainted by the illegal purpose of restraining trade, they are unable to vindicate their rights.¹

§ 12. VALIDITY OF AGREEMENTS TO PAY BENEFITS TO MEMBERS
AND CONTRIBUTIONS TO NON-MEMBERS.

(3) It is a more important point whether an agreement by a society to provide benefits for its members (sec. 4, subs. 3a), may be enforced or may found a suit for damages. The observations just made apply *à fortiori* to this case. And indeed it would be a very hard law which should prevent a member who had for many years paid into a superannuation or death fund in connection with a Trade Union from vindicating his right to the benefits which his contributions had purchased. Of course his remedy, if he has one, will be by proceeding against the trustees of the society as for an ordinary debt, and there is no summary remedy under the Friendly Societies Acts or otherwise of which he can avail himself. Thus there may be a certain advantage in keeping the insurance funds of Trade Unions separate, and in retaining the registration of separate friendly societies in connection with particular trades where that can be done. But care must be taken that these friendly societies are perfectly distinct as regards funds, officials and rules from the Trade Unions belonging to the same trades.

The recent case of *Manners v. Fairholme*, in Scotland, shows the right of a member to enforce the obligation of a Trade Union to pay benefits. There the rules of the Amalgamated Society of Engineers were carefully considered in order to ascertain its liability to pay a permanent disablement allowance of £100, and the action failed not on account of any objection to the legality of

¹ Mr. Brabrook, in his tract on this Statute says, that "this section expressly provides that subscriptions and penalties due to a Trade Union shall not be recoverable;" and he refers to the inference that has been made from section 9 of the Friendly Societies Act, 1855 ("a Friendly Society for the purpose of raising by the *voluntary* subscriptions of the members thereof . . . a fund," etc.), that arrears of contribution are not recoverable. The rules of many Friendly Societies and Trade Unions are so framed as to make it difficult to succeed in an action for arrears of subscriptions. But although Mr. Brabrook's authority is entitled to much respect, there seems to be no reason why the members of Friendly Societies and Trade Unions should not bind themselves to pay their contributions so as to make them recoverable in a Court of law. And this section does not appear to alter the law in any respect.

the Society or the rules; but only because the rules themselves were held to make the right to the allowance contingent on the Executive Council being satisfied that the applicant was permanently disabled, which had not been done. The Society was not registered.¹

An agreement to furnish contributions to non-members as an inducement to comply with the resolutions of the Union will be illegal if these resolutions tend to restrain trade; and the looseness of this doctrine creates many doubtful questions. Would it be an illegal and therefore unenforceable agreement for a society to promise to pay a man's expenses to a distant place, where there was a demand for workmen of his kind, in order that he might not increase the pressure on the labour market of a place where hands were already numerous? An agreement to discharge any fine imposed by a sentence of a Court of Justice would of course be invalid. But it is another question whether a Trade Union might not become liable by virtue of a rule to that effect, or a special agreement, to indemnify a member for legal expenses incurred in a litigation in a civil or a criminal court. In England the question would depend on the legality of the particular contract under the Statutes prohibiting the *maintenance* of suits and actions by persons having no interest. Decisions bearing on this subject are noted below.²

§ 13. AGREEMENTS BETWEEN DIFFERENT TRADE UNIONS.

(4) The fourth head of this section makes it impossible to obtain specific implement of all or almost all agreements for trade purposes between Trade Unions, or to recover damages for the breach of such agreements, which would be held to be in restraint of trade. It also leaves the previous law to determine whether agreements for "friendly" purposes between different Trade Unions are enforceable. Thus, where a registered Trade Union has various branches, questions may arise as to the disposal of funds belonging to the central board or to a particular branch or lodge, which appear to be separate Trade Unions under this Act in respect of their trustees

¹ *Manners v. Fairholme*, March 5, 1872; 10 Macph. 520. A similar question was discussed with the same result in *M'Kernan v. Greenock Lodge of United Operative Masons' Association of Scotland*, March 19, 1873.

² *Williamson v. Henley*, 6 Bing. 299. *Findon v. Parker*, 11 M. and W. 975. *Russell on Crimes*, vol. i. ch. 20.

and funds (see secs. 7 and 8, and below, sec. 19). It is difficult to forecast decisions which will depend on the terms of the rules and the nature of the claim in each case; but it is not perhaps too hazardous a conjecture that the principle of the divisibility of a society's purposes already noticed, will be applied wherever it fairly can be, so as to give validity to agreements of this kind. The main intention of the Legislature in this clause seems to be to leave the former law to operate wherever two or more unions form an alliance for the restraint of trade.

§ 14. BONDS TO SECURE PERFORMANCE OF ILLEGAL AGREEMENTS.

The fifth class of agreements which are excepted from the operation of the Act, and left to depend upon the former law, are "bonds to secure the performance of any of the above-mentioned agreements." This saves the doctrine of *Fisher v. Bridges*.¹ There a piece of land was bought for the purpose of being sold by lottery, contrary to the Statute, and part of the price being unpaid, it was, after the agreement to sell, and in pursuance of it, secured by a deed in favour of the plaintiff. The Court of Exchequer Chamber held that the covenant was given for payment of the purchase-money, that it sprung from and was a creature of the illegal agreement, and that, "as the law would not enforce the original contract, so neither would it allow the parties to enforce a security for the purchase-money, which, by the original bargain, was tainted with illegality."²

§ 15. NON-APPLICATION OF FRIENDLY SOCIETIES ACTS.

The Friendly Societies Act, 1855, and subsequent amending Acts,³ the Industrial and Provident Societies Acts,⁴ and the Companies Acts, 1862 and 1867,⁵ are expressly declared not to apply to Trade Unions, the registration of Trade Unions under any of these Acts is

¹ 2 E. & B. 118; rev. 3 E. & B. 642, 23 L. J., Q. B. 276.

² *Per curiam*. Comp. *Geere v. Mare*, 2 H. & C. 339, 33 L. J., Ex. 50. *Att.-Gen. v. Hollingsworth*, 2 H. & N. 416. See, in Scotland, *Strachan v. Graham*, June 12, 1823, 2 S. 391; *Russel v. Liston's Trs.*, June 12, 1844, 6 D. 1138.

³ 18 & 19 Vict. c. 63; 21 & 22 Vict. c. 101; 23 & 24 Vict. c. 58.

⁴ 25 & 26 Vict. c. 87; 30 & 31 Vict. c. 117.

⁵ 25 & 26 Vict. c. 89; 30 & 31 Vict. c. 131.

void, and the deposit of the rules of any Trade Union under the Friendly Societies Acts before the passing of this Act ceases to be of any effect (sec. 5).

Some societies that are really Trade Unions have been registered under the Friendly Societies Act as if they were proper friendly societies. This has been effected by excluding from the registered rules all regulations as to trade purposes. In some cases, at least in Scotland, where such exclusion has not been complete, even where the trade purposes are apparent, societies of this kind have inadvertently been registered. There is no doubt that such registration would have been held void in a court of law, even before the express enactment to that effect in this Statute, though it might have been questioned whether the proper friendly purposes of the society were tainted with the illegality.¹ That question would depend on the circumstances of each case. In the constitution of some societies the protective element is the main and most prominent purpose of the formation of the body; in others the benefits provided to members are the most important, and the trade purposes are comparatively insignificant.

Whatever may have been the law formerly, it is now distinctly declared that "the registration of any Trade Union under any of the Friendly Societies Acts, shall be void, and the deposit of the rules of any Trade Union made under the Friendly Societies Acts, 1855 and 1858, and the Acts amending the same before the passing of this Act, shall cease to be of any effect." These Acts and the Industrial and Provident Societies Acts, 1867, and any Act amending the same, and the Companies Acts, 1862 and 1867, are declared not to "apply to any Trade Union" (sec. 4).

A common way of getting the benefit of the Friendly Societies Act is to form a Friendly Society as a distinct society from the Trade Union, but to make membership of the Trade Union a condition of membership of the Friendly Society. It has not been doubted, so far as we know, that such a limitation of membership

¹ See *Farrar v. Close*, *cit.*; *R. v. Stainer*; *Gibson v. Stewart*, June 6, 1834, 12, 683, Dec. 16, 1835, 14 S. 166, rev. Aug. 3, 1840; 1 Rob. 260; *Hodges v. Wale*, 2 W. R. 65. *Comp. Reg. v. Lundie*, 31 L. J., Mag. Ca. 157, as to the bye-law of a corporation which may be good in part and bad in part, but only where the two parts are entirely distinct from each other. See below, sec. 16, *fin.*

is as lawful as any other, and that the privileges of the Friendly Societies Acts may be obtained for such a society, if its rules, management, and funds, be *bonâ fide* separate and distinct from those of the Trade Union. The necessity of making such separation clear and *bonâ fide* is not lessened by the 5th clause of the Act. But it is probable that societies of this kind will still prefer the less effective protection of their whole funds given by the new Statute—a protection which does not impose on them the condition of keeping several distinct sets of funds and accounts, and of having separate rules and office-bearers.

§ 16. REGISTERED TRADE UNIONS—EFFECT OF ILLEGAL PURPOSES.

Hitherto the Statute treats of the general law with regard to Trade Unions, including those upon which it afterwards confers special privileges. We now come to the special rights which it confers, and the conditions which it annexes.

The sixth section provides that “any seven or more members of a trade union may, by subscribing their names to the rules, and otherwise complying with the provisions of the Act with regard to registry, register the trade union under the Act, *provided that if any one of the purposes of such trade union be unlawful, such registration shall be void.*”

It becomes necessary to consider under this section what purposes of a trade union are now unlawful, seeing that no illegality attaches to them merely by reason of their being in restraint of trade. It would seem that in this respect a trade union is subject simply to the same restrictions as any other association, and that the illegality that vitiates the registration is just what would invalidate any ordinary contract. It is however of the utmost importance to trade unions to see that none of their rules are illegal, since the illegality of any one of them is enough to deprive them of the privileges of the Act.

By the general rule of law, the parties to a deed are barred or estopped from contradicting it or assigning to it any intent beyond that which appears on the instrument itself, but an exception exists on the ground of public policy in the case of contracts or

agreements made upon an illegal consideration, or for the purpose of effecting an illegal object.¹

Hence it might be contended that a society, or any of its members, should be permitted, notwithstanding this clause, to impugn the validity of its registration on the ground that it had been formed for an illegal purpose not appearing on the face of its rules, or that its funds had been applied to such an illegal purpose. But it is difficult to see to what practical advantage of the person pleading the illegality this could tend; for it would simply leave the matter to be ruled by the common law, according to which, if the illegal condition is separable and not dependent upon the other terms of the agreement between the parties, it alone is avoided, and the other conditions remain valid;² while if it appear, on the other hand, that the formation and constitution of the society have been wholly induced and affected by an illegal purpose, it follows from established rules of law, with regard to contracts and obligations, that they are utterly null and void.³

§ 17. ILLEGAL PURPOSES.

It may be useful to notice some of the "purposes" which may be held, under this clause, to annul the registration of a society.

It is to be observed that a contract becomes void on the ground of illegality if a Statute inflict a penalty for doing the thing for or about which it is made, even if that Statute does not expressly mention that the thing is unlawful, "because a penalty implies a prohibition though there are no prohibitory words in the Statute."⁴

¹ 2 Stephen's Com. 108. *Collins v. Blantern*, 3 Wils. 341, 1 Smith's L. C. 325, 341. *Paxton v. Popham*, 9 Ex. 421. *Tallis v. Tallis*, 1 E. & B. 391, 22 L. J., Q. B. 185.

² 1 Stephen's Com. 108. 1 Bell's Com. 332. *Gaskell v. King*, 11 East. 167. *Wigg v. Shuttleworth*, 13 East 87. *Howe v. Synge*, 15 East 440; 1 Smith L. C. 346. *Price v. Green*, 13 M. & W. 695, 15 M. & W. 346. See above, pp. 14, 17.

³ *Waite v. Jones*, 1 Bing. N. C. 662. *Gaslight Co. v. Turner*, 5 Bing. N. C. 666, 6 Bing. N. C. 324. *Shackel v. Rosier*, 2 Bing. N. C. 634.

⁴ Per Holt, C.J., in *Bartlett v. Vinor*, Carth. 252, cited by Tindal, C.J., in *De Begnis v. Armistead*, 10 Bing. 110. *D'Alez v. Jones*, 26 L. J. Ex. 79. *Warner v. Armstrong*, 3 My. & K. 61. *Gordon v. Howden*, Feb. 22, 1843, 5 D. 698, rev. April 28, 1845, 4 Bell's Ap. 254, 12 C. & F. 237. *Fraser v. Hill*, Jan. 17, 1852, 14 D. 335, rev. 1 Macq. 392; see 16 D. 789. *Taylor v. Crowland Gas Co.* 10 Ex. 293. *Ferguson v. Norman*, 5 Bing. N. C. 68.

All societies are deemed unlawful combinations the members of which take such oaths or engagements in the nature of oaths as are expressly prohibited by 37 Geo. III. c. 123, or are not required by law, or the members of which shall subscribe any unauthorised test or declaration, as well as societies which shall comprise members whose names shall be unknown to the society at large.¹ Formerly it was held that an oath was unlawfully administered by a society whose object was to raise wages.² For whatever purpose a society is formed it is unlawful (unless expressly declared by Statute to be legal) if its members are bound by oath not to disclose its secrets.³

Any purpose which interferes with the course of public justice, or provides for holding out incentives to the commission of crime, will be illegal so as to avoid registration. Of this nature is the payment of money to stifle a prosecution,⁴ or restrain a person from giving evidence as a witness in a Court of Justice.⁵ Mere interference with private rights has been thought not sufficient to make a contract void, *e.g.* "where the consideration is a breach of contract or of private trust, the contract may be enforced, and the persons injured by its performance are left to the ordinary means of redress."⁶ But though this is the law with regard to a contract between two individuals, the law of "conspiracy" often renders a purpose criminal when concerted by several, although it would not have that character if entertained merely by an individual.⁷ The effect of conspiracy in this respect is now somewhat less important, because under the law as altered in 1871 no one is liable to prosecution for conspiring to do any act on the ground that it restrains, or

¹ 39 Geo. III. c. 79; 52 Geo. III. c. 104; 57 Geo. III. c. 19; 2 & 3 Vict. c. 12. Hume's Com. vol. i. p. 556. Stephen's Com. vol. iv. p. 280.

² *R. v. Marks*, 3 East. 157. *R. v. Bull*, 6 C. & P. 563.

³ *R. v. Lovell*, 1 M. & Rob. 349, 6 C. & P. 596.

⁴ See *Elworthy v. Bird*, 9 Moore, 430; 13 Price, 222.

⁵ *Ward v. Lloyd*, 6 M. & G. 85; *Kirwan v. Goodman*, 9 D. P. C. 330, 5 Engl. Jur. 293; *Pool v. Bousfield*, 1 Camp. 55; *Williams v. Bayley*, 35 L. J., Ch. 717; *Keir v. Leeman*, 6 Q. B. 308, 9 Q. B. 371; *Collins v. Blantern*, 2 Wils. 341, 1 Smith's L. C. 324; Bell's Pr. 41; 1 Bell's Com. 298.

⁶ Smith's L. C. 348, citing *Walker v. Richardson*, 10 M. and W. 294; per Parke, B., *Jackson v. Cobbin*, 8 M. and W. 797; per Vaughan, C. J., *Rudyard's case*, 2 Vent. 73.

⁷ See Wright's Law of Conspiracy (Butterworths, 1878).

tends to restrain, the free course of trade, unless the act be violence, a threat, or molestation or obstruction in the manner and with the intention defined in the Criminal Law Amendment Act of 1871.¹

§ 18. POWER TO HOLD LAND.

The seventh section of the Act enables Registered Trade Unions to hold land to the extent of one acre, either as proprietors or lessees. The title to it must be in the name of the trustees of the Union, and the Society, that is, the trustees acting under the orders of the Society, or of those to whom it has delegated its powers, may sell, exchange, mortgage, or let the land belonging to it. It is further enacted that "no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom." This of course does not relieve persons dealing with a Trade Union from ascertaining who are in fact its trustees. This cannot be conclusively ascertained, as it is intended to be in the case of Friendly Societies, by inspection of the returns made to the Registrar: because changes of the officers of Trade Unions are required to be returned to him only once a-year, not immediately after appointment.

§ 19. BRANCHES TO BE CONSIDERED AS DISTINCT UNIONS.

It is further enacted, that for the purpose of this section "every branch of a Trade Union shall be considered a distinct union" (sec. 7). This makes it necessary for every branch to be registered separately, and to have its own trustees. The next section (8) also declares that "the real and personal estate of any branch of a Trade Union shall be vested in the *trustees of such branch*." There is a difference in the language used in the two sections, from which it might be supposed that separate registration is required only when a branch desires to be the owner or lessee of land. For the purposes of section 7 each branch is to be considered "a distinct union," and only a "union registered under the Act" has the privi-

¹ 34 & 35 Vict. c. 32, sec. 1.

leges conferred by that section. The clause is still clearer than that which has been held in practice to have a similar effect in necessitating the separate registration of all branches of "affiliated societies" under the Friendly Societies Act.¹

In sec. 8, on the contrary, it is merely said that the real or personal estate of any branch of a Trade Union shall be vested in the trustees of such branch. There is often considerable vagueness about the relation of branches to the Central Society. They are here supposed to have separate estates and trustees. In many cases they certainly have, and then it is plainly the safer course, even if it be not necessary, to register the branch as a separate society, just as all lodges of Oddfellows and Foresters are separately registered under the Acts relating to them.

Upon the whole, there is no sufficient reason for holding that each branch is to be deemed a distinct union only when it holds land; and that its personal or moveable property is protected by this Act, although it is not registered, provided only the central lodge or society is registered. All that can be safely said is, that if the branches of a registered Trade Union are content to hold no separate funds, but merely to meet for the appointment of delegates to the Central Board, and for other business not connected with money matters or property, and if they leave their whole financial concerns in the hands of that Board with a single set of trustees, there is no necessity for their separate registration. Each society ought to look to this in framing its constitution.

§ 20. VESTING OF PROPERTY IN TRUSTEES.

The 8th section of the Act, which is a nearly verbatim transcript of 18 & 19 Vict. c. 63, s. 18, as to Friendly Societies, vests all the real and personal estate belonging to any registered Trade Union

"in the trustees for the time being of the Trade Union appointed as provided by this Act, for the use and benefit of such Trade Union and the members thereof, and the real or personal estate of any branch of a Trade Union shall be

¹ 18 & 19 Vict. c. 63, sec. 49. "The word 'Society' shall extend to and include every branch of a society by whatever name it shall be designated."

vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests."

Every Trade Union therefore must have trustees. The only statutory provision with regard to their appointment which can be referred to by the words "as provided by this Act," is that implied by the 4th article of the Schedule (*Of matters to be provided for by the rules*). There is no statutory regulation for their appointment, as in sec. 17 of the Friendly Societies Act. The most important of the rules of a Trade Union, therefore, are those which provide for the appointment and removal of trustees. It is for many reasons not expedient, though of course it is competent, for the rules to require an annual election of trustees. If, however, they do so, re-election may be sufficient to obviate any practical difficulties.

The force of this vesting clause is shown in the case of *Yeates v. Roberts*,¹ where it was held to entitle the trustees of a newly registered Friendly Society to obtain delivery of the moneys in the hands of a person who held office in the society before the registration, but who had been expelled along with others. He pleaded that the expulsion was illegal, and that he and the other expelled members were the original society for whom he held the funds.²

On the death or removal of trustees, "the property of the society shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees" (sec. 8).

The trustees for the time being may therefore sue, by force of the Statute, although the declaration shows that the covenant was not made with them, and no assignment to them is stated.³

¹ 3 Drew. 170, aff. 7 De G. M. & G. 227.

² "If the lodge was lawfully expelled, there is an end of all question. And if it was not lawfully expelled, either the members of it can enforce their restoration to the society, or the law is defective in not providing a remedy for that wrong. Still the property of the society must be delivered to the trustees who are appointed by law to hold it." Per Turner, L. J. See also *Hodges v. Wale*, 2 W. R. 65.

³ *Morrison v. Glover*, 4 Exch. 430, 19 L. J. Exch. 20. See *infra*, sec. 21, *fin.*

The case of *Dewhurst v. Clarkson*¹ may be referred to as showing the necessity of attending strictly to the rules of the society on the appointment of new trustees, else the former trustees may successfully resist a demand for delivery of the property or funds. There a rule provided for the appointment of three trustees—one of whom should be treasurer; three persons were appointed trustees, and a fourth person was appointed treasurer. The trustees were held not entitled to maintain an action for money had and received to the use of the society against the former treasurer; no new treasurer having been appointed under the rules, and the trustees not being entitled to maintain the action unless one of them were treasurer. That case occurred under 13 & 14 Vict. c. 115, which contains no clause similar to sec. 12 of this Act, providing a summary remedy for “wilfully withholding” funds, though it is not clear that that would have made any difference in such a case.

Where a single new trustee is appointed in consequence of a death, resignation or removal, to act along with others previously in office, the effect of this clause is to “make the continuing and the new trustees joint tenants; it operates as a new appointment of all.”²

The part of this section relating to the trustees for branch societies has been already considered.

This section concludes with the words: “And in all actions, or suits, or indictments, or summary proceedings before any Court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustee or trustees of such Trade Union, without any further description.”

The words “property” and “estate” in this section include debts and obligations (choses in action³).

The clause last quoted is intended to regulate the form of indict-

¹ 3 E. & B. 194, 23 L. J., Q. B. 247; *Roberts v. Price*, 4 C. B. 1231, 16 L. J., C. P. 313. But see *Sharpe v. Warren*, 6 Price, 131.

² Per Maule, J., in *Walker v. Giles*, 6 C. B. 622, 18 L. J., C. P. 323, decided under the like clause in 10 Geo. IV. c. 56.

³ *Queenshead Industrial Society, Lim. v. Pickles*, 35 L. J., Ex. 1.

ments in criminal proceedings. There was formerly a difficulty in England in sustaining an indictment against a member of a society for embezzling its funds, because he is considered a joint owner of these funds. By "Russell Gurney's Act," however, 31 & 32 Vict. c. 116, a person who is a member of a copartnership, or is one of two or more beneficial owners of any property, is liable to be tried for theft or embezzlement of such property just as if he were not a member of the copartnership or a joint beneficial owner.¹ In Scotland the property ought to be laid with accuracy in indictments for theft and embezzlement. But in an indictment for embezzlement against the treasurer of a Yearly Society not registered, it has been held sufficient to libel the articles alleged to be stolen as "the property of the Society, or of the members thereof."²

§ 21. SUING AND BEING SUED.

The ninth section facilitates the bringing of actions and prosecutions by or against registered Trade Unions. This is to be done in all cases in the names of the trustees, or of any other officer of the Trade Union "who may be authorised so to do by the rules thereof." It is not said that the consent of the executive or of the Society itself shall be necessary. This is a matter in which the trustees will be controlled by the rules of the Society, which ought to define the relative powers and responsibilities of the officers.

The clause is as follows:—

"The trustees of any Trade Union registered under this Act, or any other officer of such Trade Union who may be authorised so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any Court of law or equity, touching or concerning the property, right, or claim to property of the Trade Union; and shall and may, in all cases concerning the real or personal property of such Trade Union, sue and be sued, plead and be impleaded, in any

¹ *R. v. Blackburn*, 11, Cox C. C. 157; *R. v. Diprose*, 11, Cox C. C. 292. See also *R. v. Cain*, 1 C. M. 309; *R. v. Loose*, 29 L. J.; M. C. 132, 8 Cox C. C. 302.

² *Smith v. Lothian*, March 21, 1862, 4 Irv. 170. See Macdonald's *Crim. Law*, 400, 407.

Court of law or equity, in their proper names, without other description than the title of their office; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons, or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such Trade Union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the Trade Union."

The power of deciding what actions are to be brought or defended on behalf of the Society is vested, it is presumed, even if there be no express provision to that effect, in the Society itself, or in the officers to whom the general conduct of its affairs is committed, the trustees or officer "authorised" by the rules being merely nominal plaintiffs or defendants in the same way as the "public officers" of some banks. It is expedient, however, that the rules should expressly state what control the Board or Committee of management shall have in case of litigation.¹

In England it has been held that, where the rules of a Society provide that no action shall be brought without the consent of the directors, this authority will be presumed at the trial, and the defendant will not be allowed at the trial to allege that the trustees are suing without the necessary consent.² And it may be laid down generally that authority will be presumed when an action is brought in the proper name and form, and that the *onus* of proving the negative rests on the defendant.

A bond or bill payable to the trustees for the time being must be sued on by the trustees when the action is brought, not by the persons who were trustees when the bond or bill was made;³ and on the death or removal of one trustee, the remaining and new

¹ *Cutbill v. Kingdom*, 1 Exch. 494, 17 L. J., Exch. 177.

² *Doe v. Glover*, 15 Q. B. 103.

³ *Timms v. Williams*, 8 Q. B. 413.

trustee may sue without any transfer or conveyance of the right,¹ even although it does not appear on the face of the security that they are trustees.²

§ 22. LIABILITY OF TRUSTEES.

The tenth section, which is the same as 18 & 19 Vict. c. 63, sec. 20, declares that a trustee of a registered Trade Union "shall not be liable to make good any deficiency which may arise or happen in the funds of such Trade Union, but shall be liable only for the moneys which shall be actually received by him on account of such Trade Union."

The liability of the trustees under this clause does not materially differ from that of trustees in ordinary private trusts.

In England, unless the terms of the trust are otherwise expressed, trustees are by statute chargeable only for what they actually receive, notwithstanding their signature of any receipt for the sake of uniformity, and are answerable only for their own acts and neglects, and not for those of each other, nor for any person with whom any trust-fund may be deposited, nor for any deficiency of any securities, unless *through their own wilful default*.³

The clause which by force of statute is implied in every trust-deed in Scotland is of like import, and bears that "each trustee shall only be liable for his own acts and intromissions, and shall not be liable for the acts and intromissions of co-trustees, and shall not be liable for omissions."⁴

By this section trustees are not made debtors of the Society when they receive its money, but merely bailees or depositaries; so that if they are robbed of it, without fault on their part, they are not liable to repay the amount.⁵ They become liable for the loss of the funds of the Society only if that loss occurs through their negligence; that is to say, through their failure to exercise due and reasonable care.⁶

¹ *Walker v. Giles*, *supra*.

² *Cartridge v. Griffiths*, 1 B. & Ald. 57.

³ 22 & 23 Vict. c. 35, s. 31.

⁴ 24 & 25 Vict. c. 84, s. 1.

⁵ *Walker v. British Guarantee Association*, 21 L. J., Q. B. 277; 18 Q. B. 277. *Giblin v. Macmullin*, 38 L. J., P. C. 25; L. R. 2 P. C. 317.

⁶ Cases cited. See *Coggs v. Barnard*, L. Raym, 909, 1 Smith's L. C. 194, etc.

Where therefore the funds have been invested in the way authorised by the rules of the Society, and the bank or other investment fails, the trustees are not liable to make good the loss, provided they have used such skill and knowledge as they possessed in selecting and retaining the investment, and have acted *bona fide*.¹ Thus trustees are not liable for loss by the failure of a bank where money is deposited until a suitable investment is found, unless the bank was in bad credit, and they have been negligent in not withdrawing the money before the failure.²

It cannot be doubted that the trustees will be liable for loss sustained in consequence of their having invested the funds committed to their care in a manner not sanctioned by the rules, where the rules prescribe a particular mode of investment. In many cases, however, the rules of Trade Unions unfortunately do not prescribe the manner in which their funds are to be invested, and there is no statutory rule such as is laid down in the case of Friendly Societies and Industrial and Provident Societies.

When the management of the funds is really vested in the directors or a committee or council of the Society, it was held in one case, that trustees who act merely ministerially cannot be made personally liable for misapplication of the funds after being uplifted by cheques drawn by them in obedience to the orders of such directors or council, even when they were cognizant of the object to which the money was to be applied.³ In that case the directors were held bound to make good the loss. But it cannot be taken to absolve the trustees from the duty of preventing an obviously illegal or unauthorised application of funds devoted to purposes which they are bound to know.

§ 23. ACCOUNTING AND AUDIT.

The trustees are entitled, in terms of the following section (11), to require the treasurer to render to them an account of the moneys and securities in his hands, and the section seems to impose upon

¹ Comp. *Dartnall v. Howard*, 4 B. & C. 345.

² *Johnston v. Newton*, 11 Hare, 169, 22 L. J., Ch. 1039. *Peterson v. Grierson*, Nov. 19, 1825, 4 S. 205.

³ *Grimes v. Harrison*, 28 L. J., Ch. 823, 26 Beav. 435.

them the correlative duty of requiring such an accounting from time to time. For loss arising through the neglect of this duty they may possibly be made liable, notwithstanding the large terms of exemption in section 10.

It is not provided that the treasurer shall find security, the clause to that effect in the Friendly Societies Act not being introduced into this Statute. But the 11th section, which is nearly the same as the 22d of 18 & 19 Vict. c. 63, provides that every treasurer or other officer of a registered Trade Union, "at the times appointed by the rules, or upon being required to do so, shall render to the trustees of the Trade Union, or to the members of such Trade Union, at a meeting of the Trade Union, an account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such Trade Union, which account the trustees shall cause to be audited by some fit and proper person or persons by them to be appointed."

It is to be observed that the rules are required by the first schedule to make provision "for the annual or periodical audit of accounts." The appointment of auditors is however by this clause vested in the trustees, who have also, it would appear, power to require an accounting, if necessary, at a different time from that fixed by the rules. The Society itself has the same power; but, varying from the Friendly Societies Act, this section gives no special authority to the Committee either in regard to the appointment of auditors or calling the treasurer or other officers to account.

Auditors are generally appointed by the Society; but it may be said that, according to the strict construction of this section of the Statute, the statutory audit must be made by a person or persons appointed by the trustees, whom they shall cause to audit the accounts rendered to them or to the Society. It may be possible to limit the words relating to the appointment of auditors to the case in which the trustees have for special reasons required an accounting. But it will be the safe course that the auditors should be appointed by the trustees, and that the trustees should take a

general supervision of the audit. The same persons may perhaps be appointed as auditors by the trustees who have already been elected by the Society, provided that the trustees exercise their own judgment as to their being "fit and proper persons."

§ 24. PAYMENT OF BALANCE AND DELIVERY OF EFFECTS BY TREASURER—CIVIL PROCEEDINGS AGAINST TREASURER.

Upon the account being audited, the treasurer shall, if required, "forthwith hand over to the said trustees the balance which upon such audit appears to be due from him; and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said Trade Union in his hands or custody; and if he fail to do so the trustees of the said Trade Union may sue such treasurer in any Court¹ for the balance appearing to have been due from him upon the account last rendered by him, and for all the moneys since received by him on account of the said Trade Union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said Trade Union; and in such action the said trustees shall be entitled to recover their full costs, to be taxed as between attorney and client."

In Scotland the Sheriff Court of the county is a competent Court for all the purposes mentioned in this section. In England the jurisdiction of the County Courts is limited in respect of the amount that may be sued for, and in other respects; and in each case the competency of suing in the County Court or the Superior Courts of law or equity must be determined by the general rules applicable to their jurisdiction.

¹ In the corresponding clause of the Friendly Societies Act the words are, "in the County Court of the district, or in any of the Superior Courts of Common Law, or in any other Court having jurisdiction," 18 & 19 Vict. c. 63, s. 22. Cf. 20 & 21 Vict. c. 101, s. 1.

§ 25. SUMMARY PROCEEDINGS FOR FRAUD OR WITHHOLDING THE
MONEY OR PROPERTY OF TRADE UNIONS.

The twelfth section of the Act is that which provides a summary mode of remedy against those who defraud the Trade Union, or withhold its money or property, whether they be its members or not. It is framed on the model of the 24th section of the Friendly Societies Act, and provides that in certain cases specified a complaint may be made to—

“The Court of Summary Jurisdiction for the place in which the registered office of the Trade Union is situate,” “by any person on behalf of the Trade Union, or by the Registrar, or in Scotland at the instance of the Procurator-Fiscal of the Court to which such complaint is competently made, or of the Trade Union” (which must be explained from the previous clause to mean any person on behalf of the Trade Union), “with his concurrence.”

The provision that the Registrar may make the complaint, is taken from the Act 23 & 24 Vict. c. 58, s. 9, and is, as Mr. Brabrook justly remarks, “an enactment of doubtful utility, as it constitutes the Registrar a public prosecutor in these matters, and does not furnish him with means for effectually fulfilling that function.” In Scotland the corresponding sections of the Friendly Societies Acts (cited) do not give the Registrar in that country power to prosecute; and under this Statute it must probably be held that sec. 19 limits the instance to the Procurator-Fiscal. In Scotland a Trade Union has no right to prosecute without application to the Procurator-Fiscal of Court, either that he may himself bring the complaint, or grant his concurrence to the party authorised to prosecute on behalf of the Trade Union (see sec. 19).

Explanations and definitions are afterwards given (see sec. 19) with respect to the Courts before which complaints may be brought, and their powers.

The jurisdiction given by this section is confined to the Court of Summary Jurisdiction for the place where the registered office of the Trade Union is situated. Hence it follows that the remedy

given by the Act is not always available in the Court of the place where the party concerned lives, and has had his dealings with the Trade Union. Thus a Trade Union may have a branch or an agent in Newcastle, its registered office being in Manchester or London. The complaint against the agent, officer, or other person defrauding the Trade Union, can therefore be brought only in Manchester or London, or wherever the registered office is. This shews the importance of having branches registered, in order that there may be a summary local jurisdiction to which defaulters are amenable. This is the obvious remedy for any inconvenience that may arise from the limitation of jurisdiction to the court of the place where the registered office is situated. It is a much simpler and safer remedy than the change in the law by regulation of the Secretary of State, which has been suggested, but which would certainly be beyond the powers confined by the Act. Moreover, it is expedient for the interest of Trade Unions themselves, that the branches through which their funds are collected, and by which in many cases they are held or distributed, should have their own trustees, and be otherwise duly organized, so as to be subject to the provisions of the Act for the security of the funds entrusted to them.

§ 26. APPLICATION OF SUMMARY PROCEEDINGS.

The procedure authorised by this section is applicable,—

“If any officer, member, or other person being, or representing himself to be, a member of a Trade Union registered under this Act, or the nominee,¹ executor, administrator, or assignee of a member thereof, or any person whatever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such Trade Union, or, having the same in his possession, wilfully with-

¹ This expression has been allowed *per incuriam* to remain, in transferring the section from the Friendly Societies Act. The privilege of paying sums under a certain amount due on the death of members without administration in England or Ireland, and without confirmation in Scotland, belongs only to Friendly and Industrial and Building Societies. No such privilege is expressly given to Trade Unions, and it will not, we presume, be maintained that it is implied by the careless insertion of this word.

hold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such Trade Union, or any part thereof."

The language quoted evidently applies only to the case of one who wrongfully obtains or personally keeps wrongful possession of moneys, etc., belonging to the Society, by misapplying them or applying them contrary to the rules (see below, sec. 31). Its application therefore is limited to cases where there has been some fraud by the official; and the section does not apply to the case of a treasurer who is merely unable, and therefore refuses, to pay a balance due by him.¹ "The act need not be one which is the subject of an indictment, but unless it partake of fraud in some way, I do not think this section applies."²

It applies only to the case of personal wrong-doing; thus it does not give the Court of Summary Jurisdiction power to make any order on an assignee or trustee for the creditors of an officer of a union for repayment out of the insolvent's effects of the sum due by him at the date of his bankruptcy or insolvency. Such an assignee or trustee has obtained possession only in his representative character, and not by any wrongful act of his own.³ The decision in the case cited was also supported by the *ratio* that the words of the section apply only to the specific moneys or effects belonging to the Society, and render the party proceeded against punishable only on failure to redeliver these after an order upon him to do so.

In proceedings before Justices in England or Ireland, the complaint must be made within six calendar months from the time when the matter of it arose.⁴

In Scotland the complaint must be brought under the Summary Procedure Act, 1864, which sets the same limit in respect of time.⁵

§ 27. ORDER TO DELIVER OR REPAY, AND PENALTY.

The Court has power under this section to order the person pro-

¹ *Barrett v. Markham*, 41 L. J., Mag. Ca. 118,

² *Per Willes, J., in Barrett v. Markham, cit.*

³ *Ex parte O'Donnell*, 35 L. J., Mag. Ca. 99, L. R. 1 Q. B. 274.

⁴ 11 & 12 Vict. c. 43, s. 11; 12 & 13 Vict. c. 70, s. 11. See *Jacomb v. Dodgson*, 32 L. J., Mag. Ca. 113; 3 B. & S. 461.

⁵ Sec. 19. — *Robertson v. D. of Atholl*, Oct. 26, 1869; 8 Macph. 57; 1 Coup. 48.

ceeded against to deliver up the "moneys, securities, books, papers, or other effects, to the Trade Union, or to repay the amount of money applied improperly, and to pay, if the Court think fit, a further sum of money, not exceeding twenty pounds, together with costs not exceeding twenty shillings; and in default of such delivery of effects or repayment of such amount of money, or payment of such penalty and costs aforesaid, the said Court may order the said person so convicted to be imprisoned, with or without hard labour, for any term not exceeding three months; provided, that nothing herein contained shall prevent the said Trade Union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party;"

that is to say, against any person against whom the proceedings authorised above described may be taken. But if a conviction has been obtained against any person under the provisions of this Act, he cannot afterwards be proceeded against by indictment (sec. 12, *fin.*).

Nor does the provision of this summary remedy take away the common law remedy by action in such a case, but it is cumulative.¹

§ 28. RULES AND REGISTRATION—REQUISITES SPECIFIED IN SCHEDULE I.

It is not proposed to consider in detail the ordinary rules of Trade Unions, but only those provisions which must be inserted in order to comply with the Statute. The rules of every registered Trade Union are required to "contain provisions in respect of the several matters mentioned in the first schedule" to the Act (sec. 14). These matters will now be detailed in the order and words of the schedule; and in considering them, most of the statutory and other provisions that *must* be attended to in drawing up or revising the rules of such societies will come under consideration.

¹ *Sinden v. Bankes*, 30 L. J., Q. B. 102; 2 E. & E. 623. *Sharpe v. Warren*, 6 Price, 131.

§ 29. NAME OF TRADE UNION.

1. "*The name of the Trade Union and place of meeting for the business of the Trade Union.*"

In framing the rules, which must set forth at the beginning the name of the Society, it is necessary to keep in view the enactment contained in sec. 13, sub-sec. 3, that—

"No Trade Union shall be registered under a name identical with that by which any other existing Trade Union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public."¹

The Secretary of State, in pursuance of the powers vested in him by the same clause (sub-sec. 6), has issued certain regulations, dated 8th Dec. 1871, the first of which, varying somewhat from the terms of this Act, is as follows:—"The Registrar shall not register a Trade Union under a name identical with that of any other existing Trade Union *known to him, whether registered or not registered*, or so nearly resembling such name as to be likely to deceive the members or the public."

The case of *Reg. v. Stephenson*, 41 L. J., Q. B. 366, was one in which two applications had been made to the Registrar of Friendly Societies in England to register the Amalgamated Society of Carpenters and Joiners, one describing the Society as meeting at a place in London, and the other at Chorlton-on-Medlock, Manchester. It appeared that differences had arisen within the Society which led to its division into two sections, represented by the respective applicants. It was held by the Court of Queen's Bench, a rule having been obtained on the Registrar to shew cause why a *mandamus* should not issue commanding him to register the London Society, that the Registrar had rightly refused both applications, as he was not bound to inquire into the differences which existed in

¹ Similar provisions occur in the Industrial and Provident Societies Act, 25 & 26 Vict. c. 87, s. 8; and more fully in the Companies Act, 1862, 25 & 26 Vict. c. 89, s. 20. See *Lawson v. Bank of London*, 18 C. B. 84, 25 L. J., C. P. 188; *London & Provincial Law Assurance Co. v. Prov. Joint Stock Life Assurance Co.*, 17 L. J., Ch. 37; *London Assurance Co. v. London & Western Assurance Corporation*, 32 L. J., Ch. 64; *Colonial Life Assurance Co. v. Home & Colonial Assurance Co.*, 23 Beav. 548, 33 L. J., Ch. 741.

the Society, and to alter the position of the one party by granting registration to the other.

§ 30. PLACE OF MEETING—REGISTERED OFFICE.

The place of meeting for the business of the Trade Union, which must be set forth in the rules, does not appear to be necessarily the same place as the Registered Office to which section 15 of the Statute refers. Special notice of the Registered Office, to which all communications and notices may be addressed, must by that section be given to the Registrar; but the schedule seems to require the place where the general and other meetings of the Society are held to be set forth in the rules. This is to be accounted for by the fact that the 15th section has obviously been transferred from the Companies Act, 1862, or Industrial and Provident Societies Act, while the provisions in the schedule are based on those of the Friendly Societies Act, 1855.¹ The provisions however are not inconsistent, and the safe course is to set forth both the Registered Office and the place of meeting for the business of the Society in the rules, and to send a formal notice of the situation of the Registered Office to the Registrar of Friendly Societies within seven days after the registration of the Trade Union. Notice of any change in the situation of the Registered Office must also be given to the Registrar, and recorded by him. The effects of failure to give notice of the situation of the Registered Office or of a change therein are, that the Trade Union is not deemed to have complied with the provisions of the Act, *i.e.* it can take no benefit from its registration, and that a Trade Union which is "in operation for seven days without having such an office," and *every officer thereof*, "shall each incur a penalty not exceeding five pounds for every day during which it is so in operation" (sec. 15).

Seeing that until such notice is given, the Trade Union "shall not be deemed to have complied with the provisions of this Act" (sec. 15), it will be proper in all cases to specify the Registered Office in the rules or on the fly-leaf, which will probably be held to be sufficient notice.

¹ 25 & 26 Vict. c. 89, s. 32; 25 & 26 Vict. c. 87, ss. 12, 13; 18 & 19 Vict. c. 63, s. 25.

The place of meeting being made part of the rules of the Society, it follows that it can be altered only in accordance with the rule as to the alteration or rescission of rules; and anything done at a meeting held elsewhere will be ineffectual in law. So, in the case of a Friendly Society under the same statutory provision, it was held that new rules made at a meeting held away from the place of meeting were void,¹ and could not be registered.

The place of meeting of the Committee is not so fixed down by the rules; and it is evidently intended that the Registered Office should be moveable in the discretion of the managers of the Society. Power to change its situation may be given to them by the rules.

§ 31. OBJECTS OF SOCIETY—APPLICATION OF FUNDS, ETC.

2. *"The whole of the objects for which the Society is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to the benefits assured thereby, and the fines and forfeitures to be imposed on any member of such Trade Union."*

The first and second of the particulars here required are intended for the protection of the members and funds of the Society from unconstitutional or unauthorised proceedings on the part either of the officials or any portion of the members. Every association, whether it be a mercantile partnership or company, a church, or a club, can safely exist only if its purposes be defined for the guidance of its office-bearers and members; otherwise it is obvious that its funds or its influence might be applied to objects which were entirely inconsistent with the views of the individuals who formed it, and for whose benefit it exists. Every member of a Trade Union or of a Friendly Society ought to understand that he as an individual may invoke the aid of the law to restrain any conduct of the managers or even of a majority of the Society, if it be contrary to its rules and constitution. At the outset its members agree to be bound together for definite purposes only, to which their contributions are to be applicable; and apart

¹ *Reg. v. Pratt*, 6 B. & S. 672.

from this, they remain free and independent as before. The will of the majority is indeed the will of the Trade Union in all matters within the scope of its operations, as defined by the original contract, unless where that contract has committed the exercise of the powers of the Society to some others, as *e.g.* to a certain individual or board, or has required the assent of a certain proportion of the members other than a mere majority, or has appointed such assent to be ascertained in a particular way, or after certain formalities. But the will of the majority is not the will of the Trade Union to any effect beyond, or in opposition to, the purposes of its formation.

The law of companies and partnerships affords many illustrations of this principle, which is the same in effect in a trade union or a friendly society, whether registered or unregistered, just as it operates with nearly the same vigour in the case of private unincorporated mercantile companies as in those which are incorporated. In one case it was proposed to turn a Fire and Life Insurance Company into a Marine Insurance Company, but the directors were restrained from doing so by an injunction granted on the application of a single shareholder, although the directors had offered to return him all the deposits paid on his shares with interest.¹ So the partners of a theatrical company, having arranged by their original agreement that the profits should be exclusively devoted to certain purposes, seven of them afterwards resolved that the profits should be applied in a different way; the eighth dissented, and, on his application, Lord Eldon gave a similar judgment.² Again, the directors of a joint-stock company, formed for the purpose of carrying goods and passengers between this country and Australia, were prevented, on the application of a minority of the company, from taking goods on commission from persons in Great Britain and guaranteeing the sales in Australia.³

As there can be no difference in principle in regard to the powers of majorities and officials in Trade Unions and in mercantile com-

¹ *Natusch v. Irving*, Gow on Partn. 398. See Lindley on Partn. 510; Clark on Partn. 191.

² *Const v. Harris*, Turn. & R. 496.

³ *Maxtone v. Brown*, 1839, 1 D. 367. Comp. *Grimes v. Harrison*, 26 Beav. 435; 28 L. J. Ch. 823; *Hughes v. Layton*, 4 B. & S. 820; 33 L. J. M. C. 89, and many other cases cited in Lindley and Clark, *Ucc.*

panies, it is obviously of the first importance to the success of the association and to the safety and comfort of the members that the purposes of association should be distinctly and fully defined; and that where changes are necessary, they should be made in the way prescribed by the rules.¹ Acts transgressing the laws of the society made by majorities, or by the office-bearers, have often been set aside by the Courts; or have involved the doers of them in personal liability. Thus a contract made by the committee of a Friendly Society with a sick member who had met with an accident disabling him from working at his trade, to allow him a fixed weekly sum for life, with permission to attend to any business he might be fit for, in consideration of his giving up all other claim on the society during his life and at his death, was held to be *ultra vires* and a violation of the rules.² And where trustees became liable for a mortgage debt of a Benefit Building Society, in respect of land bought without the authority of the rules, they were held not entitled to have their loss thereby incurred made good to them by the contributions of the shareholders, all of whom had not authorized or concurred in that variation of the objects of the society.³

The same remarks apply to the provision requiring that the purposes to which the funds are applicable shall be set forth. See also above, sec. 26.

§ 32. RIGHT TO BENEFITS—FORFEITURES—EXPULSION, ETC.

It is unnecessary in a brief analysis of this kind to discuss the rules which are to define the rights of members to benefits and their liability to fines and forfeitures. It may be observed however that such looseness of expression occurs in the rules of many friendly societies relating to these objects, as to lead to frequent disputes and doubts. The Registrars of Friendly Societies are not in the habit, in the case of either friendly societies or trade unions, of scrutinizing minutely the terms of these rules, and societies ought therefore to be particularly careful in framing them, so as to make

¹ *R. v. Godolphin*, 8 A. & E. 338.

² *Tyrrell v. Woolley*, 2 Scott N. R. 171; 1 M. & G. 809.

³ *In re Kent Benefit Building Society*, 1 Dr. & Sm. 417, 30 L. J. Ch. 785. Comp. *Stedman v. Malcolm*, June 28, 1842, 4 D. 1441.

it quite clear in what circumstances a benefit is due or a penalty or forfeiture incurred.¹

Especially with regard to expulsion, it may not be inexpedient to warn the members of societies not only to be careful in framing their rules, but to be scrupulously careful in carrying them out. Expulsion in many cases involves the forfeiture of valuable rights paid for during a course of years, and therefore the person expelled has a strong interest to set it aside or to obtain damages, if any prescribed formalities have been omitted, or any injustice done; and the Courts of Law, while they will be unable to interfere with the determination of a society made in *bona fide* conformity with its laws and constitution, even although it should be wrong, will yet be ready in such a matter to discover any deviation from the rules, and to restore a party injured against any clear violation of fair dealing and justice. The appropriate remedy of an expelled member in such a case will be in damages, for which the funds of the society will be liable.² It may be doubted how far in all cases reinstatement as a member can be ordered, though in some cases it seems not only to be competent but necessary to the ends of justice.³

§ 33. ALTERATION OF RULES.

3. "*The manner of making, altering, amending, and rescinding rules.*"

In the case of friendly societies new rules have no legal validity or operation until certified by the Registrar, after seeing a solemn declaration by the secretary that the regulations of the Statute or the rules have been duly complied with in making them. There is no such provision in regard to Trade Unions, which seem to make alterations in their rules on their own responsibility. It is required however by sec. 16 that among the annual returns to be sent to

¹ See *Manners v. Fairholme*, March 5, 1872, 10 Macph. 520. See above, sec. 12.

² *Blue v. West Kilbride Free Gardeners' Society*, July 12, 1866, 4 Macph. 1042; *Mersey Docks and Harbour Board v. Gibbs*, 35 L. J. Ex. 225; 11 H. L. Ca. 686; L. R. 1 H. L. 93.

³ *Ex parte Wooldridge*, 81 L. J. Q. B. 122; *Card v. Carr*, 1 C. B. N. S. 197; 26 L. J. C. P. 113. Comp. *Howie v. Rust*, May 14, 1836, 14 S. 752; *Robertson v. Davidson*, Jan 18, 1842, 4 D. 398.

the Registrar before the 1st of June in each year, there shall be sent—

“A copy of all alterations of rules, and new rules, and changes of officers made by the Trade Union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the Trade Union as they exist at that date.”

Failure to comply with this provision makes the Trade Union liable in a penalty of £5 for each offence. It is also enacted that—

“Every person who wilfully makes or orders to be made any false entry in or omission from . . . the return of such copies of rules or alterations of rules shall be liable to a penalty not exceeding £50 for each offence” (sec. 16).

It is apparently not quite consistent with these portions of the Statute that the second schedule specifies a fee not exceeding 10s. for registering alterations in rules. This fee will not be required on the mere return of copies of alterations. But the whole scope and intention of the Act appear to require the registration of the new rules and alterations, as much as of the original rules; and it will certainly be expedient, if not necessary, to obtain a fresh certificate and registration whenever alterations are made in regard to any of the statutory requisites specified in the first schedule.¹

In all societies the rules as to amendments and alterations of the constitution or bye-laws are intended to secure the assent to such alterations, or at least the knowledge and tacit or implied assent, of all the members of the society. Sometimes the precautions taken against rash and unadvised changes have been too complicated, and have placed societies in the dilemma of being precluded from making any alterations, or of being able to make them only by evading the rule. The statutory provision as to altering the rules of building societies is somewhat of this sort. While therefore it is proper that changes in the rules should not be made by a mere motion at an ordinary meeting of the society, the safeguards ought not to be too numerous and difficult to observe. The ordinary rule adopted by friendly societies merely requires alterations to be agreed to at

¹ The regulations just issued by the Secretary of State with regard to this matter will be found in the Appendix.

a "general meeting of the society specially called for the purpose." This implies that a notice of the alterations proposed, or that certain alterations will be proposed, shall be sent to all known members.

It was held in a Scotch case that alterations of rules and rates of a Friendly Society did not affect the allowances due to widows whose rights had emerged previous to making the alterations.¹

§ 34. APPOINTMENT OF OFFICIALS.

4. "*A provision for the appointment and removal of a general committee of management, of a trustee or trustees, and other officers.*"

The particular meeting at which the election is to be made should be stated, the period of tenure of office, and the number of trustees, committee men, etc. As annual elections are generally provided for, nothing is said in the rules of many societies with regard to the removal of officers, or supplying vacancies which may occur between the ordinary times for election. It is always expedient however to provide for such contingencies, and indeed the Act expressly requires that some provision shall be made for the *removal* of office-bearers.² It may be judicious to provide that in the event of no election taking place at the annual general meeting, or such meeting failing to be held, the office-bearers for the previous year shall remain in office. If the members of committee are intended to retire in rotation provision should be made for this in the rules.

Whatever provisions may be made with regard to the election of officers, it is desirable that they should be strictly observed. In *Roberts v. Price*, the majority of a committee of eleven, vested by the rules with the power of electing officers, removed A from the office of treasurer, and appointed B in his stead. Only ten members of the committee were present, one being absent and not having

¹ *Caitness Highland Friendly Society v. Macmillan*, Dec. 6, 1884, 13 S. 135.

² Under the now repealed Friendly Societies Act of 1850 (13 & 14 Vict. c. 115, s. 4), which required the rules to contain a provision "for appointing trustees, a treasurer," etc., it was held by Wood, V.C., where rules directed that trustees should be elected from time to time by delegates, that the Act and the rules implied the power of motion or removal for the purpose of selecting new trustees. *Hodges v. Wale*, 2 W. R. 65, 24 L. J. 144.

been summoned to attend. Although the absent member had for some time ceased to attend the meetings of the committee, and had intimated his intention not to attend any more, and although A had himself called for a poll, it was held that the meeting had not been duly constituted, and that the election was void.¹

In short, in a friendly society or a trade union, as in a railway company or any other similarly organized association, every substantial violation of the prescribed manner of appointing managers will invalidate the election, and entitle dissentient members to have managers so appointed prevented by injunction or interdict from acting, unless they have made themselves parties to the irregularity by express or implied acquiescence.² In questions with those who are not members, however, and who have not the means of knowing whether the internal regulations of the association have been complied with, such irregularly appointed officials will in general bind the society by contracts made in good faith with them on its behalf.³

§ 35. INVESTMENT OF FUNDS, AND AUDIT.

5. "*A provision for the investment of the funds, and for an annual or periodical audit of the accounts.*"

It was proper that an Act intended to secure protection for the funds of Trade Unions should require these associations to take the precautions which all well-conducted associations ought to adopt against the malversation or negligence of their officials. Accordingly here, as in the case of friendly societies, the members of a Trade Union are directed to declare by their constitution in what kind of securities their moneys are to be invested, what sums the officers are to be permitted to keep in their hands, etc. Investments of course will be in the names of the trustees.

The Act contains no specification or limitation of the kinds of investment which the rules may prescribe, such as occurs in the Friendly Societies Act.

¹ *Roberts v. Price*, 4 C. B. 1231, 16 L. J., C. P. 313. Cf. *Kirk v. Bell*, 16 Ad. & E. 290.

² *Mozley v. Alston*, 1 Phill. C. C. 790; *Blackburn v. Finlay*, Feb. 4, 1848, 10 D. 590; *Hutcheson v. Halkett*, Nov. 26, 1847, 10 D. 150.

³ *Ex parte Eagle Co.*, 4 K. & J. 549; *In re Bonelli's Telegraph Co.*, L. R. 12 Eq. 246, 40 L. J., Ch. 567.

§ 36. INSPECTION OF BOOKS AND NAMES OF MEMBERS.

6. "*The inspection of the books and names of members of the Trade Union by every person having an interest in the funds of the Trade Union.*"

This provision, which may of course restrict the right to inspect to "all reasonable times," to business hours, or to some time specified, requires no comment.

§ 37. APPLICATION FOR REGISTRY.

The rules having been framed, if it is desired to register the Society under the Act—

- "An application to register the Trade Union, and (two) printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the Registrar under this Act" (sec. 13, sub-s. 1),
i.e. the Registrar of Friendly Societies in England, Ireland, or Scotland as the case may be (sec. 17).

The Registrar will furnish a form of application¹ appointed by the Secretary of State, which is so framed as to show at once whether the provisions just enumerated as conditions of registration are contained in the rules.

This application is signed by seven members (sec. 6), who state by what authority they make the application, *i.e.* whether they were authorized to do so by a resolution of a general meeting of the Trade Union, or otherwise. The regulations made by Mr. Secretary Bruce, direct that "upon an application for the registration of a Trade Union which is already in operation, the Registrar, if he has reason to believe that the applicants have not been duly authorized by such Trade Union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary."

It is obvious that the Registrar has no power given him by the Statute to administer an oath or compel the production of any evidence. In a case already cited² it was contended that this

¹ See Appendix.

² *Reg. v. Registrar of Friendly Societies*, 41 L. J., Q. B. 366.

regulation was not within the powers conferred by the Act on the Secretary of State; but the Court of Queen's Bench gave no countenance to this view. It is reasonable to suppose that, even apart from any special regulations, the Registrar is entitled as a condition of granting the certificate of registry, to require applicants to show, where any doubt arises, that they have authority to use the name of the Trade Union which it is proposed to register.

"Where a Trade Union applying to be registered has been in operation for more than a year before the date of such application there shall be delivered to the Registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such Trade Union, in the same form and showing the same particulars as if it were the annual general statement, required as hereinbefore mentioned, to be transmitted annually to the Registrar" (sec. 13 [4]).

This is one of the provisions intended to give publicity to the affairs of Trade Unions, in order that their members and others may be acquainted with their financial condition. A form for the statement, as fixed by the Secretary of State, will, if required, be furnished by the Registrar along with the printed form of application.

§ 37. DUTY OF REGISTRAR AND HIS CERTIFICATE.

"The Registrar, upon being satisfied that the Trade Union has complied with the regulations respecting registry in force under this Act, shall register such Trade Union and such rules" (sec. 13 [2]).

The Registrar is not directed, as in the case of Friendly Societies, to advise with the secretary, if required, for the purpose of ascertaining whether the rules are calculated to carry into effect the intentions and objects of those who desire to form the Society,¹ nor to certify that the rules are in conformity with law and the provisions of the Act. He does not inquire what provisions the rules contain beyond those specially required by the Statute. Everything else is inserted at the risk of the Society. All that he has to do is—

¹ 18 & 19 Vict. c. 63, s. 26.

"Upon registering such Trade Unions to issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of the Act with respect to registry have been complied with" (sec. 13 [5]).

It may be asked if the Registrar is really bound to register rules containing illegal provisions, *e.g.* such as are struck at by the Criminal Law Amendment Act, rules providing for picketing, molestation, etc. The answer is that it is in the highest degree improbable that the registration of any such rules will be asked, but that if it should be, the Registrar's duty clearly is to refuse a certificate.

The certificate in use, which is in a printed form, merely states that the Registrar "has this day certified (*name and place of society*) under the Trade Union Act 1871." A counterfoil remains in the book of registry kept in the office, and a copy of the rules is also preserved. The Secretary of State's regulations provide, in conformity with the second schedule, that the certificate of registry shall be delivered to the applicant on payment of £1.

It appears, from the 5th sub-section, that the Registrar has power to "withdraw or cancel" a certificate; and it will be his duty to do so if he finds, from the annual return of alterations of rules and new rules required by sec. 16, that any of the statutory requisites have ceased to be complied with. He will also be bound to do so, as it would seem from the words of sec. 15, if a Trade Union should change the situation of its registered office without giving the statutory notice. And other cases may perhaps be figured in which the power thus given by implication must be exercised.

§ 38. COPIES OF RULES.

The rules being registered, it is enacted (sec. 14) that—

"A copy of the rules shall be delivered by the Trade Union to every person" (not merely to every member) "on demand on payment of a sum not exceeding one shilling."

The penalties provided for circulating false copies are applicable, however, only to the giving of such copies to members of registered

unions or persons intending or applying to become members. The 18th section provides as follows:—

“If any person with intent to mislead or defraud gives to any member of a Trade Union registered under this Act, or to any person intending or applying to become a member of such Trade Union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such Trade Union, or that there are no [other rules of such Trade Union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a Trade Union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanour” (sec. 18),
and in Scotland, of “a crime and offence” (sec. 23).

§ 39. ANNUAL GENERAL STATEMENT TO BE SENT TO THE REGISTRAR.

Besides the annual returns of alterations of rules and changes of officers before referred to, it is necessary every year, before the 1st of June, to transmit to the Registrar “a general statement of the receipts, funds, effects, and expenditure” of every registered Trade Union, showing fully its assets and liabilities at the date to which it is made out, and its receipts and expenditure during the year preceding. It must also show separately the expenditure for the several objects of the Trade Union. The Registrar is to fix the form and dates, and the particulars which the statement must contain (sec. 16).

Every member of a Trade Union, and “every depositor” in it, is entitled to receive a copy of this statement without payment, on making application to the secretary or treasurer (*ib.*).

The Secretary of State’s Regulations direct, that all documents transmitted to the Registrar relating to any registered Trade Union shall be open to inspection of any person on payment of one shilling.

Every year the Registrars “shall lay before Parliament reports

with respect to the matters transacted by them in pursuance of the Act" (sec. 17).

§ 40. LEGAL PROCEEDINGS IN ENGLAND AND IRELAND—CONSTITUTION OF COURTS.

"In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts" (sec. 19),

that is to say, in England the Act 11 & 12 Vict. c. 43, and the amending Acts (sec. 23); and in Ireland, the Acts regulating the powers and duties of justices within the police district of Dublin metropolis within that district, and elsewhere the Petty Sessions Act of 1851 (13 & 14 Vict. c. 93) and amending Acts. It is also provided that summary orders under the Act (such as those mentioned in the twelfth section) may be made and enforced in England and Ireland by way of complaint before a Court of Summary Jurisdiction, in manner provided by the same Acts (sec. 19).

The Court of Summary Jurisdiction in England must be constituted, when hearing and determining an information or complaint, in the following manner:—

- (1) "In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute;¹
- (2) "In the city of London, of the Lord Mayor or any Alderman of the said city;²
- (3) "In any other place, of two or more justices of the peace sitting in petty sessions" (sec. 19).

But no person who is a master, or father, son, or brother of a master in the particular manufacture, trade or business in or in connection with which any offence under the Act is charged to have been committed, shall act as a member of such court (sec. 22).

In Ireland, the Court of Summary Jurisdiction, subject to the same disqualification of parties interested personally or by their relatives, is to consist—

¹ See 2 & 3 Vict. c. 71; 3 & 4 Vict. c. 84; 11 & 12 Vict. c. 42, s. 29; 11 & 12 Vict. c. 43, s. 33; 21 & 22 Vict. c. 73; 26 & 27 Vict. c. 97.

² 11 & 12 Vict. c. 42, s. 30; and 11 & 12 Vict. c. 43, s. 44.

- (1) "In the police district of Dublin metropolis, of a divisional justice;
- (2) "In any other place, of a resident magistrate" (sec. 19, sub-sec. 1).

§ 41. LEGAL PROCEDURE (*continued*).

The procedure in England is upon information or complaint, according as the exercise of jurisdiction invoked relates to an offence within the jurisdiction of the magistrate or justice before whom the information or complaint is laid, or to the payment of money or other order within the competency of Justices of Peace. Though two justices in petty sessions are required to constitute the court for hearing and determining such information or complaint, the summons requiring the party to appear and answer, or the warrant to apprehend him, may be granted by a single justice within his jurisdiction.¹ In the case of an information supported by the oath of the prosecutor, the justice may cause a warrant to issue in the first instance, instead of the summons by which it is otherwise preceded.² As has been already stated, every information or complaint must be laid or made within six calendar months from the time when the matter arose.³

As this Act does not require it, it is not necessary that the information shall be in writing.⁴

The description of the offence in the information or complaint shall be sufficient in law, if it be in the words of the Act⁵ (sec. 19, sub-sec. 2), and—

"Any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived, and no proof in relation to the matters so specified shall be required on the part of the informant or prosecutor" (sec. 19, sub-sec. 3).

¹ *R. v. Harwich*, 13 Q. B. 237, 18 L. J., Mag. Ca. 106.

² 11 & 12 Vict. c. 43, ss. 1-3, 29, etc. The forms of the summonses are given in a Schedule to the Act.

³ 11 & 12 Vict. c. 43, s. 11.

⁴ *Reg. v. Millard*, Dears. C. C. 116; 22 L. J. Mag. Ca. 108.

⁵ See *Rez v. James*, Cald. 548; *Paley on Summary Convictions*, 179-181.

§ 42. APPEALS TO QUARTER SESSIONS IN ENGLAND AND IRELAND.

A judgment or conviction by the Court of Summary Jurisdiction on determining any complaint or information under this Act is not conclusive, but may be appealed to Quarter Sessions by any party aggrieved, subject to the following conditions and regulations:—

- “1. The appeal shall be made to some Court of General or Quarter Sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the Court from which the appeal is made.
- “2. The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the Court of Summary Jurisdiction of his intention to appeal, and of the ground thereof.”

The provisions in this section appear to be in addition to and not to come in place of those of the Act 12 & 13 Vict. c. 45, by which the course of procedure in appeals to Quarter Sessions is mainly regulated. This Act requires the notice of appeal to be in writing, signed by the person or persons giving the same, or by his or their attorney in his behalf.¹ The Court of General or Quarter Sessions may, if it think fit, award costs incurred in consequence of such notice having been given, against the party giving it, although such appeal should not afterwards have been prosecuted or entered.² The same Act excludes the appellant at the trial from going into or giving evidence of any other ground of appeal than those set forth in his notice.³ The provisions of the Act with regard to defects in the mode of setting forth the grounds of appeal and the amendment thereof, and frivolous or vexatious grounds of appeal, need only to be referred to here.⁴

- “3. The appellant shall, immediately after such notice, enter into a recognizance before a Justice of Peace in the sum of £10, with two sureties in the sum of £10, conditioned personally to try such appeal and to abide the judgment thereon, and to pay such costs as may be awarded by the Court.

¹ 12 & 13 Vict. c. 45, s. 1.

² *Ib.* s. 1. *Rea v. Boulbee*, 4 A. & E. 498.

³ 12 & 13 Vict. c. 45, s. 6.

⁴ *Ib.* ss. 3, 4, 9.

"4. Where the appellant is in custody, the Justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody.

"5. The Court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the judgment of the Court of Summary Jurisdiction, or remit the matter to such Court, with the opinion of the Court of Appeal thereon,"

or make any other order it thinks just. If the matter be remitted back, the Court of Summary Jurisdiction is to hear and decide the matter in accordance with the opinion of the Court of Appeal. The Court of Appeal may make any order it thinks fit with regard to the costs to be paid by either party (sec. 20). Costs so awarded must, by the terms of the order, be made payable within a time specified to the Clerk of the Peace, to be by him paid to the party entitled thereto.¹

§ 43. APPEALS ON QUESTIONS OF LAW TO SUPERIOR COURTS IN ENGLAND AND IRELAND.

If a question of law be involved, the decision of the Quarter Sessions may in its turn be brought under review of the Court of Queen's Bench, the mode of proceeding being by *mandamus* requiring the Quarter Sessions to rehear the appeal.

An appeal in England and Ireland is also competent on points of law in the form of a special case stated for the opinion of a Superior Court of Common Law by the justices on the application of either party.² This may be applied for before the Court of first instance, but in that case the person so appealing is taken to have abandoned his right to appeal to the Quarter Sessions.³ The application must be made in writing, within three days after the determination of the justices or magistrate (for it is also applicable in the case of a conviction or order by a police or stipendiary magistrate). The appellant must enter into a recognizance to prosecute the appeal without delay, to submit to the judgment of the Court,

¹ 11 & 12 Vict. c. 43, s. 27, which prescribes a mode of recovering such costs. See also 12 & 13 Vict. c. 43, s. 5.

² 20 & 21 Vict. c. 43, s. 2.

³ *Ib.* s. 14.

and to pay the costs.¹ The Court to which the case is transmitted shall hear and determine the questions of law arising thereon, and thereupon shall reverse, affirm, or amend the determination of the justices or magistrates, or remit to them with its opinion, and it may make such other order, or such order as to costs, as it thinks fit, such orders being final and conclusive.²

§ 44. LEGAL PROCEEDINGS IN SCOTLAND.

“In Scotland all offences and penalties under the Act shall be prosecuted and recovered by the Procurator-Fiscal of the county (or public prosecutor) in the Sheriff Court, under the provisions of the Summary Procedure Act, 1864;³ and summary orders under the Act (see sec. 12) may be made and enforced on complaint in the Sheriff Court” (sec. 19, sub-sec. 1).

Hence, as in England and Ireland, all complaints must be instituted within six months from the time when the matter of such complaint arose.⁴ The complaint must be in a form (written or printed) prescribed by the Act.⁵ The provisions of sec. 19, sub-sec. 2 & 3, with regard to the description of the offence, and the proof of exceptions, etc., already mentioned, apply to Scotland as well as to England and Ireland. It is unnecessary to set forth the sections of the Statute further than is necessary to describe the offence.⁶ Schedule A of the Summary Procedure Act requires the particulars of the offence to be set forth in the complaint,⁷ and also “the nature of the forfeiture or penalty, and the alternative.”⁸

¹ 20 & 21 Vict. c. 43, s. 3.

² *Ib.* s. 6. See *Overseers of St. James v. St. Mary Battersea*, 29 L. J., Mag. Ca. 26. *Buckmaster v. Reynolds*, 13 C. B., N. S. 63.

³ 27 & 28 Vict. c. 53.

⁴ *Ibid.* s. 24.

⁵ *Ib.* secs. 4, 17, and sched. A.

⁶ See Fraser on *Master and Servant*, 266.

Fraser, *l.c.*

⁷ *Thomson v. Wardlaw*, Jan. 23, 1865, 3 Irv. 45; *Scott v. Cumming*, 5 Irv. 278; *Kinnear v. Whyte*, May 25, 1868, 6 Macph. 804; *Gardner v. Dymock*, Jan. 9, 1865, 5 Irv. 18.

§ 45. APPEALS FROM SHERIFF IN SCOTLAND.

The only mode of appeal against any judgment of the Sheriff, who is the only Court of Summary Jurisdiction, is that specified in sec. 21, viz. an appeal to the next Circuit Court of Justiciary, or in the Lothians to the High Court of Justiciary, under the Act 20 Geo. II. c. 43. In order that the right of appeal may be effectual, it is necessary that a note of the evidence adduced should be taken; and therefore the provision of the 16th section of the Summary Procedure Act, that "it shall not be necessary in any proceeding under the Act to record or to preserve a note of the evidence adduced," does not seem to be applicable.¹

In Scotland there is unfortunately no mode of appealing by stating a special case on points of law for the opinion of the Supreme Courts; but in any question of civil right, if both parties are agreed upon the facts, and dispute only as to the law applicable thereto, they may, without raising any action or proceeding, or at any stage of an action or proceeding, present a special case to either Division of the Court of Session for its opinion, and, if desired, its judgment.² One of the parties cannot, therefore, as in England, obtain the determination by a Superior Court of a question stated in a case, but the concurrence of both is required. Further, the case is not framed, as in England, by the Justice or Magistrate, stating the evidence adduced before him; but it is to be adjusted by the parties themselves, and signed by their counsel. It may therefore either merely embody the result of evidence led, or it may contain such evidence and additional facts known to the parties, or it may consist of facts known to the parties only, and be framed without evidence having been led, or even before any complaint has been brought into Court.

Penalties imposed under the provisions of the Act in Scotland may be enforced by imprisonment on default of payment. The term, which may not exceed three months, must be specified in the summons or complaint (sec. 21). Penalties, when recovered, shall

¹ See *Gardner v. Dymock*, Jan. 9, 1865, 5 Irv. 13; *Anderson v. Cooper*, March 7, 1868, 6 Macph. 560, 1 Couper, 18.

² 31 & 32 Vict. c. 100, s. 63.

be paid to the Sheriff-clerk, who accounts for and pays them to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown (*ib.*).

It remains to be remarked that, in Scotland, the term "misdemeanour," when it occurs in the Act, means a crime and offence, and that the disqualification of a judge who is a master or the relative of a master in the business in connection with which the offence is alleged to have been committed, extends to Scotch Sheriffs and Lords of Justiciary (sec. 22).

§ 46. SAVING CLAUSE IN THE ACT.

The 23d section contains a proviso, after the definition of the term Trade Union (see above, sec. 8), that, notwithstanding the terms of that definition of Trade Unions, the Act shall not affect—

- "(1) Any agreement between partners as to their own business;
- "(2) Any agreement between an employer and those employed by him as to such employment;
- "(3) Any agreement in consideration of the sale of the good-will of a business, or of instruction in any profession, trade, or handicraft."

Although the operation of this saving clause may perhaps be wider than at first appears, its obvious intention is to leave untouched the rules of the common law with regard to those not unfrequent contracts by which one party, for the purpose of avoiding rivalry and disadvantage to another who may have been his partner or employer, or who purchases from him the good-will of business, restrains himself from a particular trade within certain limits. These rules, or at least the general principles on which they rest, are the same throughout the United Kingdom.¹

¹ See 1 Smith's Leading Cases, 356; 1 Bell's Com. 302; Smith's Merc. Law, 16, 194.

APPENDIX.

I.

34 & 35 Vict. cap. 31. "*The Trade Union Act 1871.*"

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PRELIMINARY.

1. This Act may be cited as "*The Trade Union Act, 1871.*"

Short title.

CRIMINAL PROVISIONS.

2. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise. (sec. 9.)

3. The purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful so as to render void or voidable any agreement or trust. (secs. 2-7, 8, 10.)

4. Nothing in this Act shall enable any court to entertain any legal proceeding instituted with the object of directly enforcing or recovering damages for the breach of any of the following agreements, namely,

1. Any agreement between members of a trade union as such, concerning the conditions on which any members for the time being of such trade union shall or shall not sell their goods, transact business, employ, or be employed :

2. Any agreement for the payment by any person of any subscription or penalty to a trade union :

3. Any agreement for the application of the funds of a trade union,—

- (a.) To provide benefits to members ; or,
- (b.) To furnish contributions to any employer or workman not a member of such trade union, in consideration of such employer or workman acting in conformity with the rules or resolutions of such trade union ; or,
- (c.) To discharge any fine imposed upon any person by sentence of a court of justice ; or,

4. Any agreement made between one trade union and another ; or,

5. Any bond to secure the performance of any of the above-mentioned agreements.

But nothing in this section shall be deemed to constitute any of the above-mentioned agreements unlawful. (secs. 11-14.)

Provisions
of 18 & 19
Vict. c. 63,
20 & 31
Vict. c.
117, 25 &
26 Vict. c.
89, &c.
not to
apply to
trade
unions.

5. The following Acts, that is to say,

(1.) The Friendly Societies Acts, 1855 and 1858, and the Acts amending the same;

(2.) The Industrial and Provident Societies Act, 1867, and any Act amending the same; and

(3.) The Companies Acts, 1862 and 1867,

shall not apply to any trade union, and the registration of any trade union under any of the said Acts shall be void, and the deposit of the rules of any trade union made under the Friendly Societies Acts, 1855 and 1868, and the Acts amending the same, before the passing of this Act, shall cease to be of any effect. (secs. 4, 5, 15.)

REGISTERED TRADE UNIONS.

Registry
of trade
unions.

6. Any seven or more members of a trade union may by subscribing their names to the rules of the union, and otherwise complying with the provisions of this Act with respect to registry, register such trade union under this Act, provided that if any one of the purposes of such trade union be unlawful such registration shall be void. (secs. 16, 17.)

Buildings
for trade
unions
may be
purchased
or leased.

7. It shall be lawful for any trade union registered under this Act to purchase or take upon lease in the names of the trustees for the time being of such union any land not exceeding one acre, and to sell, exchange, mortgage, or let the same, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire whether the trustees have authority for any sale, exchange, mortgage, or letting, and the receipt of the trustees shall be a discharge for the money arising therefrom; and for the purpose of this section every branch of a trade union shall be considered a distinct union. (secs. 18, 19.)

Property
of the
trade
unions
vested in
trustees.

8. All real and personal estate whatsoever belonging to any trade union registered under this Act shall be vested in the trustees for the time being of the trade union appointed as provided by this Act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests, and upon the death or removal of any such trustees the same shall vest in the succeeding trustees for the same estate and interest as the former trustees had therein, and subject to the same trusts, without any conveyance or assignment whatsoever, save and except in the case of stocks and securities in the public funds of Great Britain and Ireland, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description. (sec. 20.)

Actions,
&c. by or
against
trustees,
&c.

9. The trustees of any trade union registered under this Act, or any other officer of such trade union who may be authorized so to do by the rules thereof, are hereby empowered to bring or defend, or cause to be brought or defended, any action, suit, prosecution, or complaint in any court of law or equity, touching or concerning the property, right, or claim to property of the trade union; and shall and may, in all cases concerning the real or personal property of such trade union, sue and be sued, plead and be impleaded, in any court of law or equity, in their proper names, without

other description than the title of their office ; and no such action, suit, prosecution, or complaint shall be discontinued or shall abate by the death or removal from office of such persons or any of them, but the same shall and may be proceeded in by their successor or successors as if such death, resignation, or removal had not taken place ; and such successors shall pay or receive the like costs as if the action, suit, prosecution, or complaint had been commenced in their names for the benefit of or to be reimbursed from the funds of such trade union, and the summons to be issued to such trustee or other officer may be served by leaving the same at the registered office of the trade union. (sec. 21.)

10. A trustee of any trade union registered under this Act shall not be liable to make good any deficiency which may arise or happen in the funds of such trade union, but shall be liable only for the moneys which shall be actually received by him on account of such trade union. (sec. 22.)

Limitation
of respon-
sibility of
trustees.

11. Every treasurer or other officer of a trade union registered under this Act, at such times as by the rules of such trade union he should render such account as herein-after mentioned, or upon being required so to do, shall render to the trustees of the trade union, or to the members of such trade union, at a meeting of the trade union, a just and true account of all moneys received and paid by him since he last rendered the like account, and of the balance then remaining in his hands, and of all bonds or securities of such trade union, which account the said trustees shall cause to be audited by some fit and proper person or persons by them to be appointed ; and such treasurer, if thereunto required, upon the said account being audited, shall forthwith hand over to the said trustees the balance which on such audit appears to be due from him, and shall also, if required, hand over to such trustees all securities and effects, books, papers, and property of the said trade union in his hands or custody ; and if he fail to do so the trustees of the said trade union may sue such treasurer in any competent court for the balance appearing to have been due from him upon the account last rendered by him, and for all the money since received by him on account of the said trade union, and for the securities and effects, books, papers, and property in his hands or custody, leaving him to set off in such action the sums, if any, which he may have since paid on account of the said trade union ; and in such action the said trustees shall be entitled to recover their full costs of suit, to be taxed as between attorney and client. (secs. 23, 24.)

Treasurers,
&c. to
account.

12. If any officer, member, or other person being or representing himself to be a member of a trade union registered under this Act, or the nominee, executor, administrator, or assignee of a member thereof, or any person whatsoever, by false representation or imposition obtain possession of any moneys, securities, books, papers, or other effects of such trade union, or, having the same in his possession, wilfully withhold or fraudulently misapply the same, or wilfully apply any part of the same to purposes other than those expressed or directed in the rules of such trade union, or any part thereof, the court of summary jurisdiction for the place in which the registered office of the trade union is situate, upon a complaint made by any person on behalf of such trade union, or by the registrar, or in Scotland at the instance of the procurator fiscal of the court to which such complaint is competently made, or of the trade union, with his concurrence, may, by summary order, order such officer, member, or other person to deliver up all such moneys, securities, books, papers,

Punish-
ment for
withhold-
ing money,

or other effects to the trade union, or to repay the amount of money applied improperly, and to pay, if the court think fit, a further sum of money not exceeding twenty pounds, together with costs not exceeding twenty shillings; and, in default of such delivery of effects, or repayment of such amount of money, or payment of such penalty or costs aforesaid, the said court may order the said person so convicted to be imprisoned, with or without hard labour, for any time not exceeding three months: Provided, that nothing herein contained shall prevent the said trade union, or in Scotland Her Majesty's Advocate, from proceeding by indictment against the said party; provided also, that no person shall be proceeded against by indictment if a conviction shall have been previously obtained for the same offence under the provisions of this Act. (secs. 25-27.)

REGISTRY OF TRADE UNIONS.

Regulations for registry.

13. With respect to the registry, under this Act, of a trade union, and of the rules thereof, the following provisions shall have effect:

- (1.) An application to register the trade union and printed copies of the rules, together with a list of the titles and names of the officers, shall be sent to the registrar under this Act. (sec. 37.)
- (2.) The registrar, upon being satisfied that the trade union has complied with the regulations respecting registry in force under this Act, shall register such trade union and such rules. (sec. 37.)
- (3.) No trade union shall be registered under a name identical with that by which any other existing trade union has been registered, or so nearly resembling such name as to be likely to deceive the members or the public. (sec. 29.)
- (4.) Where a trade union applying to be registered has been in operation for more than a year before the date of such application, there shall be delivered to the registrar before the registry thereof a general statement of the receipts, funds, effects, and expenditure of such trade union in the same form and showing the same particulars as if it were the annual general statement required as hereinafter mentioned to be transmitted annually to the registrar. (sec. 37.)
- (5.) The registrar upon registering such trade union shall issue a certificate of registry, which certificate, unless proved to have been withdrawn or cancelled, shall be conclusive evidence that the regulations of this Act with respect to registry have been complied with. (sec. 37.)
- (6.) One of Her Majesty's Principal Secretaries of State may from time to time make regulations respecting registry under this Act, and respecting the seal (if any) to be used for the purpose of such registry, and the forms to be used for such registry, and the inspection of documents kept by the registrar under this Act, and respecting the fees, if any, to be paid on registry, not exceeding the fees specified in the second schedule to this Act, and generally for carrying this Act into effect. (secs. 29, 37, etc. App. pp. 64, 65.)

Rules of registered trade unions.

14. With respect to the rules of a trade union registered under this Act, the following provisions shall have effect:

- (1.) The rules of every such trade union shall contain provisions in respect of the several matters mentioned in the first schedule to this Act. (secs. 28-36.)

- (2.) A copy of the rules shall be delivered by the trade union to every person on demand on payment of a sum not exceeding one shilling. (sec. 38.)

15. Every trade union registered under this Act shall have a registered office to which all communications and notices may be addressed; if any trade union under this Act is in operation for seven days without having such an office, such trade union and every officer thereof shall each incur a penalty not exceeding five pounds for every day during which it is so in operation. Registered office of trade unions.

Notice of the situation of such registered office, and of any change therein, shall be given to the registrar and recorded by him: until such notice is given the trade union shall not be deemed to have complied with the provisions of this Act. (sec. 30.)

16. A general statement of the receipts, funds, effects, and expenditure of every trade union registered under this Act shall be transmitted to the registrar before the first day of June in every year, and shall show fully the assets and liabilities at the date, and the receipts and expenditure during the year preceding the date to which it is made out, of the trade union: and shall show separately the expenditure in respect of the several objects of the trade union, and shall be prepared and made out up to such date in such form, and shall comprise such particulars, as the registrar may from time to time require; and every member of, and depositor in, any such trade union shall be entitled to receive, on application to the treasurer or secretary of that trade union, a copy of such general statement, without making any payment for the same. Annual returns to be prepared as registrar may direct.

Together with such general statement there shall be sent to the registrar a copy of all alterations of rules and new rules and changes of officers made by the trade union during the year preceding the date up to which the general statement is made out, and a copy of the rules of the trade union as they exist at that date.

Every trade union which fails to comply with or acts in contravention of this section, and also every officer of the trade union so failing, shall each be liable to a penalty not exceeding five pounds for each offence.

Every person who wilfully makes or orders to be made any false entry in or any omission from any such general statement, or in or from the return of such copies of rules or alterations of rules, shall be liable to a penalty not exceeding fifty pounds for each offence. (secs. 33, 39.)

17. The registrars of the friendly societies in England, Scotland, and Ireland shall be the registrars under this Act. Registrars.

The registrars shall lay before Parliament annual reports with respect to the matters transacted by such registrars in pursuance of this Act.

18. If any person with intent to mislead or defraud gives to any member of a trade union registered under this Act, or to any person intending or applying to become a member of such trade union, a copy of any rules or of any alterations or amendments of the same other than those respectively which exist for the time being, on the pretence that the same are the existing rules of such trade union, or that there are no other rules of such trade union, or if any person with the intent aforesaid gives a copy of any rules to any person on the pretence that such rules are the rules of a trade union registered under this Act which is not so registered, every person so offending shall be deemed guilty of a misdemeanour. (sec. 38.) Circulating false copies of rules, &c. a misdemeanour.

LEGAL PROCEEDINGS.

Summary
proceed-
ings for
offences,
penalties,
&c.

19. In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by The Summary Jurisdiction Acts.

In England and Ireland summary orders under this Act may be made and enforced on complaint before a court of summary jurisdiction in manner provided by The Summary Jurisdiction Acts.

Provided as follows :

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; that is to say,

(A.) In England,

(1.) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :

(2.) In the city of London, of the Lord Mayor or any alderman of the said city :

(3.) In any other place, of two or more justices of the peace sitting in petty sessions.

(B.) In Ireland,

(1.) In the police district of Dublin metropolis, of a divisional justice :

(2.) In any other place, of a resident magistrate.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered by the procurator fiscal of the county in the Sheriff Court, under the provisions of The Summary Procedure Act, 1864.

In Scotland summary orders under this Act may be made and enforced on complaint in the Sheriff Court.

All the jurisdictions, powers, and authorities necessary for giving effect to these provisions relating to Scotland are hereby conferred on the sheriffs and their substitutes.

Provided that in England, Scotland, and Ireland—

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or prosecutor. (secs. 40, 41, 44.)

Appeal to
quarter
sessions.

20. In England or Ireland, if any party feels aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

(1.) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made :

(2.) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of

summary jurisdiction of his intention to appeal, and of the ground thereof :

- (3.) The appellant shall immediately after such notice enter into a recognizance before a justice of the peace in the sum of ten pounds, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court :
- (4.) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody :
- (5.) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and if the matter be remitted to the court of summary jurisdiction the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just. (secs. 42, 43.)

21. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force. Appeal in Scotland as prescribed by 20 Geo. II. c. 43.

All penalties imposed under the provisions of this Act in Scotland may be enforced in default of payment by imprisonment for a term to be specified in the summons or complaint, but not exceeding three calendar months.

All penalties imposed and recovered under the provisions of this Act in Scotland shall be paid to the sheriff clerk, and shall be accounted for and paid by him to the Queen's and Lord Treasurer's Remembrancer on behalf of the Crown. (sec. 45.)

22. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act. (secs. 40, 44.) Interested person not to act as a member of a court of appeal.

DEFINITIONS.

23. In this Act—

The term Summary Jurisdiction Acts means as follows :

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to

Definitions.

As to the term "Summary Jurisdiction Acts."

"summary convictions and orders," and any Acts amending the same:

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.

In Scotland the term "misdemeanour" means a crime and offence.

As to
"trade
union."

The term "trade union" means such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or between workmen and workmen, or between masters and masters, or for imposing restrictive conditions on the conduct of any trade or business, as would, if this Act had not passed, have been deemed to have been an unlawful combination by reason of some one or more of its purposes being in restraint of trade: Provided that this Act shall not affect—

1. Any agreement between partners as to their own business ;
2. Any agreement between an employer and those employed by him as to such employment ;
3. Any agreement in consideration of the sale of the goodwill of a business, or of instruction in any profession, trade, or handicraft. (secs. 8, 40, 46.)

REPEAL.

Repeal of
Trades
Unions
Funds
Protection
Act, 1869,
as herein
stated.

24. The Trades Unions Funds Protection Act, 1869, is hereby repealed.

Provided that this repeal shall not affect—

- (1.) Anything duly done or suffered under the said Act :
- (2.) Any right or privilege acquired or any liability incurred under the said Act :
- (3.) Any penalty, forfeiture, or other punishment incurred in respect of any offence against the said Act :
- (4.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering or imposing any such liability, penalty, forfeiture, or punishment as aforesaid. (sec. 7.)

SCHEDULES.

FIRST SCHEDULE.

Of Matters to be provided for by the Rules of Trade Unions Registered under this Act.

See 18 &
19 Vict.
c. 63, s.
25.

1. The name of the trade union and place of meeting for the business of the trade union.
2. The whole of the objects for which the trade union is to be established, the purposes for which the funds thereof shall be applicable, and the conditions under which any member may become entitled to any benefit assured thereby, and the fines and forfeitures to be imposed on any member of such trade union.

3. The manner of making, altering, amending, and rescinding rules.
4. A provision for the appointment and removal of a general committee of management, of a trustee or trustees, treasurer, or other officers.
5. A provision for the investment of the funds, and for an annual or periodical audit of accounts.
6. The inspection of the books and names of members of the trade union by every person having an interest in the funds of the trade union. (secs. 29-36.)

SECOND SCHEDULE.

Maximum Fees.

For registering trade union . . .	£1	0	0
For registering alterations in rules . .	0	10	0
For inspection of documents . . .	0	2	6

II.

Regulations by Secretary of State under the Trade Union Act, 1871
(34 & 35 Vict. cap. 31) sec. 13, sub-sec. (6). (Issued 8th Dec. 1871.)

TRADE UNION ACT, 1871. 34 & 35 VICT. CAP. 31.

In pursuance of the powers vested in me by the above mentioned Act, I, the Right Honourable Henry Austin Bruce, one of Her Majesty's Principal Secretaries of State, make the following regulations:—

(1.) The registrar shall not register a trade union under a name identical with that of any other existing trade union known to him, whether registered or not registered, or so nearly resembling such name as to be likely to deceive the members or the public.

(2.) Upon an application for the registration of a trade union which is already in operation, the registrar, if he has reason to believe that the applicants have not been duly authorized by such trade union to make the same, may, for the purpose of ascertaining the fact, require from the applicants such evidence as may seem to him necessary.

(3.) Application for registry shall be made in the form subjoined to these regulations.

(4.) All documents transmitted to the registrar relating to any registered trade union shall be open to inspection of any person on payment of one shilling.

(5.) The certificate of registry shall be delivered to the applicant on payment of one pound.

(Signed) H. A. BRUCE.

WHITEHALL, 8th December, 1871.

III.

Form of Application referred to in foregoing Regulation. (See sec. 45.)

TRADE UNION ACT, 1871. 34 & 35 VICT. CAP. 31.

Form of Application for Registry.

1. This application is made by the seven persons whose names are subscribed at the foot hereof.

2. The name under which it is proposed that the trade union on behalf of which this application is made shall be registered, is
as set forth in rule No.

To the best of our belief there is no other existing trade union, whether registered or not registered, the name of which is identical with the proposed name or so nearly resembles the same as to cause confusion.

(Name of
trade union.)

3. The place of meeting for the business of the
and the office to which all communications and notices
may be addressed, is at
as set forth in rule No.

(Name of
trade union.)

4. The
the day of
was established on

(Name of
trade union.)

5. The whole of the objects for which the
is established and the purposes for which the funds thereof
are applicable are set forth in rule No.

6. The conditions under which members may become entitled to benefits assured are set forth in rule No.

7. The fines and forfeitures to be imposed on members are set forth in rule No.

8. The manner of making, altering, amending, and rescinding rules is set forth in rule No.

9. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in rule No.

10. The provision for the investment of funds and for the periodical audit of accounts is set forth in rule No.

11. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in rule No.

12. Accompanying this application are sent—

1. Two printed copies, each marked A, of the rules.

2. A list, marked B, of the titles and names of the officers.

3. A general statement, marked C,¹ shewing—

(a) The assets and liabilities of the²

at the date up to which the statement is made out.

(b) The receipts and expenditure of³

during the year preceding the date⁴ up to which the statement is made out, such expenditure being set forth under separate heads corresponding to the several objects of the trade union.

¹ This will only be necessary in case where the trade union has been in operation more than a year previous to the date of the application.

² (Name of trade union.)

³ (Name of trade union.)

⁴ This date will be fixed by the registrar.

13. We have been duly authorized by the trade union to make this application on its behalf, such authorization consisting of

(Signed)

1
2
3
4
5
6
7

This will only be necessary where the trade union has been in operation before the date of the application.

day of

18 .

In paragraph 13, must be stated whether the authority to make this application was given by "a resolution of a general meeting of the trade union," or, if not, in what other way it was given.

The two copies of rules must be signed by the seven members signing this application.

The application should be *dated*, and forwarded to "The Registrar of Friendly Societies, 28 Abingdon Street, Westminster, S.W.," (or in Edinburgh or Dublin as the case may be).

IV.

Forms for the Rules required by the First Schedule of the Trade Union Act, 1871, to be inserted in the Rules of all Registered Trade Unions.

The following Forms of Rules were prepared by the Registrar of Friendly Societies in England, for the purpose of assisting trades unions in complying with the provisions of the Act. The blanks may be filled up with such numbers as the trade union decide upon.

1. *Name and Place of Meeting for Business.*

The name of the trade union is

The business thereof shall be carried on at
in the county of

Notice of the situation of such registered office,¹ and of any change therein, shall be given to to the Registrar, and be recorded by him (sec. 15).

Objects of the Trade Union.

This trade union is established for the following objects (*here set forth the whole of the objects for which the trade union is to be established*).

All moneys received by the trade union on any account whatever shall be applied to carrying out the foregoing objects according to these rules. Any officer misapplying the funds shall repay the same, and be excluded. (*Here set forth the conditions under which any member may become entitled to any benefit assured, and the fines and forfeitures to be imposed on any member. Notice should be taken, that by section 6 of*

¹ But see the observations as to place of business and registered office at p. 87.

the Act, it is provided that, if any one of the purposes of a trade union be unlawful, its registration shall be void).

3. Manner of making, altering, and amending Rules.

No new rule shall be made nor any of the rules herein contained or hereinafter to be made shall be amended, altered, or rescinded, unless with the consent of a majority of the members present at a general meeting specially called for that purpose.

4. Appointment and removal of Officers.

The officers whose titles and names are set forth in the schedule to these rules shall be the first officers of the trade union, or (in the case of a trade union already in operation) are the present officers of the trade union.

The general committee of management shall consist of members. The trustees shall continue in office during the pleasure of the members, and be removable at a general meeting; and in case of a vacancy or vacancies, another or others shall be elected by a majority of members at a meeting called for that purpose. The treasurer, secretary, and committee of management shall all continue in office until the general annual meeting, unless previously removed by a resolution of the major part of the members present at any meeting called for that purpose: and at every annual meeting a treasurer, committee, and other officers shall be appointed for the ensuing year, or on failure thereof, the officers last appointed shall be considered as again appointed; and in case any officer, other than a trustee, shall die or be removed prior to such annual meeting, the committee of management shall appoint a person to fill up the vacancy.

The treasurer shall, in the month of _____ in every year, and also when required by the trustee or a majority of the trustees, render to the trustees a true account of all moneys received and paid by him on account of the trade union; and shall also, when required by a majority of the trustees, pay over all moneys remaining in his hands, and assign and deliver all securities and effects, books, papers, and property of or belonging to the trade union in his hands or custody to the trustees.

5. Investment of Funds and Audit of Accounts.

So much of the funds of the trade union as may not be wanted for immediate use or to meet the usual accruing liabilities shall, with the consent of the committee of management, be invested by the trustees in such of the following ways as the committee shall direct, viz. in the public funds or upon Government or real securities in Great Britain or Ireland, or upon debentures, mortgages, or securities of any company incorporated by charter or Act of Parliament, and paying a dividend, or upon the security of any county, borough, or other rates authorized to be levied and mortgaged by Act of Parliament. (See above, sec. 35.)

The committee shall cause the accounts of the trade union to be regularly entered in proper books, and shall cause a statement of the accounts, with all necessary vouchers, up to the end of the months of June

and December in each year, to be made out and laid before two auditors to be chosen by the members¹ at the quarterly meeting held next before each yearly meeting, and shall lay before each such meeting a balance-sheet signed by the auditors, showing the assets and liabilities and receipts and expenditure of the trade union, showing separately the expenditure in respect to the several objects of the Trade Union, and made out in the form required by the Registrar; and the auditors shall make to such a meeting a report upon the balance-sheet so laid before them, and in case they do not adopt the same, or any part thereof, shall specially report thereon to such meeting.

Every member shall be entitled to a copy of such statement and report without making any payment for the same (sec. 16).

6. *Inspection of Books and Names of Members.*

The books and accounts of the trade union, and the list of the names of the members, shall be open to the inspection of every person having an interest in the funds of the trade union, at all reasonable times.

V.

Form of Annual Return of Alterations of Rules and New Rules required by Sec. 16 of the Act.

TRADE UNION ACT, 1871.

Annual Return of Alterations of Rules and New Rules for the year ending 31st December, 18 .

Date of Alteration or making of Rule.	Words or Rule <i>previous</i> to Alteration.	Words of Rule as altered, or of New Rule.

 _____ } *Trustees.*

NOTE.—With the Annual Return must be furnished a copy of Rules as they exist at the date of the Return.

¹ Sec. 11 requires auditors to be appointed by the trustees. See above, p. 80.

VI.—Annual Return of the Receipts, Funds, Effects, and Expenditure of Trade Unions, required by the Registrars in virtue of Sec. 16 of the Act.

TRADE UNION ACT, 1871.

General Statement of the Receipts, Funds, Effects, and Expenditure of the _____ Trade Union, held at Reg. No. Dr. _____ in the County of _____ from 1st January to 31st December, 18 ____ Cr.

RECEIPTS.			EXPENDITURE.		
18 1st Jan. to 31st Dec.	£	s. d.	18 1st Jan. to 31st Dec.	£	s. d.
To Balance in Treasurer's hands on 1st January, 18			By Stationery and Printing		
Fines			Salaries of Paid Officers (specifying them)		
Entrance Fees			Other necessary Expenses of Management		
Contributions paid by Members for (Here set forth each of the objects of the Trade Union severally.)			Allowance for _____ to _____ Members		
Contributions paid by Members for Expenses of Management			(Here set forth under the several heads of benefit assured by the Trade Union, the number of Claimants for each, and the Amount paid.)		
Interest received during the year on the Funds invested			Investments made during the Year		
			Balance in Treasurer's hands on 31st December, 187		
	£			£	

Statement of the Assets and Liabilities of the _____ Trade Union.		
18 1st Jan. to 31st Dec.	£	s. d.
Dr.		
To Amount of Money to pay Members (Here set forth separately the Amount of each of the Funds for Benefits.)		
To amount of the Management Fund		
	£	

Trade Union.		
18 1st Jan. to 31st Dec.	£	s. d.
Cr.		
By Money in Public Funds		
By Government Securities		
By Real Securities		
By other Investments (if any, specifying them)		
	£	

Auditors.

Trustees.

VII.

*Form for Annual Return of Change of Officers required by Sec. 16
of the Act.*

TRADE UNION ACT, 1871.

*Annual Return of Change of Officers for the year ending 31st
December 18 .*

Date of change.	Title of Officer.	Name of Officer retiring.	Cause of Retirement.	Name of Officer appointed.

 _____ } *Trustees.*

VIII.

Specimen Rules of a Trade Union.

In Appendix V., I have given forms prepared by the Registrar in England in 1871 for the purpose of assisting societies to comply with the requirements of the Act as set forth in the Schedule. Those forms, which are not in any way authoritative, were intended to facilitate the labours of the Registrar, who stated in his report for England for 1871, that "although these requirements are very clearly set forth in the form of application for registry prescribed by the Secretary of State (see p. 66), not a single trade union has, on first sending its rules to the Registrar, complied with all of them." The experience of the Registrar in Scotland has been nearly the same. Of whatever advantage these model rules may be in the Registrar's office, and for the purpose of registration, it is proper in a manual of this kind, intended to facilitate the judicious formation as well as the registration of trade unions, that some guidance should be given in framing the whole constitution of a society. With this view the following code of rules is given. It is founded on the rules of two existing societies, and has been chosen because, if it is less detailed and less elaborate than the codes of such societies as the Amalgamated Engineers and Associated Carpenters, it excels them in clearness and simplicity. I do not give it here as being perfect, but simply because it has fewer faults and less confusion than any other set of rules which I have seen. It is adapted for the most usual form of union, viz an association divided into branches or district unions, which again are sometimes made up of lodges or local bodies. With regard to the question whether branches require separate registration, see above, p. 24.

I. *Name and objects of the society.*—This society shall be called the . Its objects shall be to promote a good and fair understanding between the employers and employed; to prevent strikes; to protect and defend its members against injustice; to secure an advance of wages, a reduction in the hours of labour, two days' pay for Sunday duty, and all other over-time to be paid for as time and a half; to afford a ready means, by arbitration or otherwise, for the settlement of every dispute.

The place of meeting for the business of the society shall be at , which shall also be the registered office of the trade union.

II. *Election of members, entrance fee, and contributions.*—The society shall be open to receive as members the following classes. Each candidate for admission shall be regularly proposed and seconded, and elected by a majority of the members present at any of the regular or special meetings of the branch within the bounds of which he resides or is employed. Every person admitted a member of the society shall pay a entrance fee of , which shall include the charge for a copy of the rules, and also a contribution card (or entrance money according to the following scale); and the subscription to the society shall be per week, to be paid . Any member who allows his contribution to run three months into arrear shall, after receiving seven days' notice in writing from the secretary of the branch to which he paid his last contribution, cease to be a member of the society, and forfeit all claims thereon for and in respect of all sums of money paid into the society, unless he can assign a good cause to the satisfaction of the branch committee of which he is a member, who shall have power to reinstate him in membership. A member must belong to the society three months before he is free to partake of any benefit.

III. *Government of the society and election of office-bearers.*—The government of the society shall be conducted by an executive council, elected by the several branches. Each branch shall meet for this purpose once every six months, in the months of February and August, on a date to be fixed by the executive council. Each branch shall elect at least one member to the executive council. Should a branch contain more than 500 members, such branch shall elect two members; or should a branch contain 1000 members or upwards, such branch shall elect three members. Five members shall form a quorum. The executive council shall meet on a day to be fixed by the chairman, within 14 days after the date of the election. At said meeting the council shall elect a chairman, vice-chairman, a general secretary, a general treasurer, and a standing committee of ten members, to whom shall be committed the whole powers of the executive council for the time being. But the executive council shall have power, at any meeting called for the purpose, to veto the action of the standing committee. The general secretary shall be bound to convene a meeting of the council within four days, on receiving a requisition signed by at least six members of council. The members of the standing committee may be elected either from the executive council or from the members of any branch. The meetings shall be held at such times as the executive council or the standing committee shall appoint, but shall in all cases commence between the hours of eight and ten P.M.

IV. *Election of trustees for general fund.*—There shall be three trustees of the general fund, who shall be chosen by a general meeting of the executive council; and whenever a vacancy shall occur among such trustees, the same shall be filled up at the earliest opportunity after such vacancy has occurred by the executive council. The trustee or trustees may, at any time, be removed by the council if they do not give satisfaction, and another or others, as the case may be, shall be elected at a special general meeting of council called for that purpose.

V. *Powers of chairman*—The chairman and vice-chairman shall *ex officio* be members of the standing committee. The chairman, or, in his absence, the vice-chairman, shall preside at all meetings, shall maintain order, and in every division, in case of equality of votes, shall determine the same by a casting vote. He shall have deliberative vote.

VI. *Power to take vote of whole society.*—In the event of the action of the standing committee of the executive council being disapproved by any large portion of the members, it shall be in the power of any number exceeding one-sixth of the whole members, by a requisition presented to the chairman, to require him to call meetings of each branch, as after provided for, which the chairman shall be bound to do within eight days from the presentation of such requisition. Such requisition shall state the question or questions to be decided in such a way as to admit of an affirmative or negative answer. The chairman shall thereupon appoint a meeting of each branch to be held, fixing the time and place thereof, notice of which shall be given by the secretary of each branch respectively to all the members thereof, according to the mode usually adopted for calling meetings of the branch. Said branch meetings shall be presided over by the chairmen of the branches, or, in their absence, the persons appointed by the rules. At said branch meetings the question or questions to be submitted for decision shall be read from the chair, and, after fair discussion and deliberation, the number of votes for and against the question or questions at issue shall be ascertained and recorded in the minutes, and the vote so taken shall be transmitted to the general secretary, who, with the aid of the chairman and standing committee, shall sum up the same, and the course of action of the society shall be determined by the majority of votes of the whole society as so ascertained. It shall be in the power of the standing committee to send to each branch meeting one representative, who shall have power to take part in the deliberations of the meeting.

VII. *Duties of General Secretary.*—The duties of the general secretary shall be to attend all meetings of the executive council and standing committee, to take minutes of the proceedings thereof, to check, from time to time, the intromissions of the general treasurer, and that at least once in every three weeks, and to append a docquet to that effect in the society's cash-book. He shall countersign all receipts granted by the general treasurer to the branch treasurers. He shall conduct all correspondence, keep a register of the members, and generally transact all business, and answer all matters which may be required of him by the executive council or standing committee, convene all general meetings, and, when required by the chairman, or by requisition, convene all special meetings. He shall make up a balance sheet of the affairs of the society, as on the 31st day of December and 30th day of June in each year, and not later than

the 15th day of January and 15th day of July respectively, deliver the same to the auditors for examination. He shall prepare and send to the Registrar the various returns required by the statute.

VIII. *Duties of the General Treasurer.*—The general treasurer shall receive and take charge of the funds, which shall be deposited by him, on a deposit account in the name of the trustees of the society, in the

Bank. All payments on account of the society, exceeding £5 sterling, shall be made by cheques, signed by two trustees and treasurer, and countersigned by the chairman, bearing the society's seal; each cheque shall bear on the face of it the true name of the person to whom the money is payable. The treasurer shall be held responsible for the correct keeping of the banker's pass-book; all moneys coming into his hands shall be paid by him to the bankers within seven days after the receipt thereof, but he shall be allowed to hold £5 in hand to meet current expenses. He shall give such security as the executive council may deem expedient. The treasurer shall, in the months of June and December in every year, and also when required by a majority of the trustees, render to the trustees a true account of all moneys received and paid by him on account of the society.

IX. *Election of Auditors.*—The trustees¹ shall, at the first meeting after their own election, appoint two auditors from the general body of members to examine the accounts of the society for the ensuing six months. Said auditors shall have access to all books, papers, and documents of the society in the possession of any of the society's office-bearers, and shall attend at the next half-yearly meeting of the executive council with their audit report fully finished. Any auditor found guilty of conniving at any error in the accounts, shall be expelled from the society. Each member shall be entitled to a balance-sheet on application to the branch of which he is a member, free. In addition to the audit above provided for, it shall be in the power of the executive council or the standing committee, or either of them, or of the trustees, to obtain an audit and report by a professional accountant or actuary, if they think proper.

X. *Alteration of Rules, &c.*—No new rules shall be made, nor shall any of the rules of the society be amended, altered, or rescinded, unless with the consent of the majority of the members present at a meeting of the executive council specially called for that purpose. Notice of any proposed new rule, or any alteration, must be given at a meeting of council, and must have been sent to all the branches of the society, at least six weeks before the half-yearly meeting of the branches immediately preceding the meeting at which it is considered.

XI. *Members going on Duty in a state of Intoxication.*²—Any member going on duty while in a state of intoxication, or becoming so, while in the discharge of his duty, or being guilty of any grossly culpable act while on duty, shall, if reported to any branch of the society, be fined in any sum not exceeding 10s., and deprived of all benefits from the society for any period not exceeding three months. The branch committee shall, so soon as any report is made to them, investigate the matter, and transmit a statement of the same, with such recommendations as they think proper, to the standing committee, who shall have power to carry out the provisions of this rule, and whose decision shall be final.

¹ See p. 30 *supra*.

² See p. 76, note.

XII. *Suspension of Members.*—Should any free member be suspended by his employer, the nature of such suspension must be intimated by the member with any other statement he may have to make, to the secretary of his branch, within 48 hours after suspension. The said secretary shall cause the branch committee to investigate the same, and the result thereof shall forthwith be reported to the standing committee. Members under suspension shall be relieved from the funds of the society to such an amount, not exceeding _____ per week, and in such form as the said committee may decide. Any member failing to comply with this rule shall be fined the sum of one shilling, and shall not be entitled to partake of the benefits of the society until he has complied with the provisions thereof.

XIII. *Members out of Employment.*—Should any free member be out of employment, under circumstances satisfactory to the standing committee, he shall receive from the funds of the society the sum of _____ per week for three months, or such shorter period as the standing committee may think just. All members, while on benefit, must report themselves at least once in each week (or oftener if required), as the branch committee may direct. Any member neglecting to do so shall forfeit all claim due, unless such neglect arises from sickness; the standing committee in all such cases to decide. Members must give notice in writing to the branch secretary of their being out of employment within 48 hours thereafter, or they will be dealt with according to rule 12.

XIV. *Members imposing on the Society.*—If any member be found guilty of imposing on the funds of the society by a false statement, the standing committee shall have power to deal with the matter according to their discretion, to the effect of either imposing a fine, not exceeding two pounds, suspending the offender from benefit for a period not exceeding twelve months, or expelling him from the society.

[*The Rules which follow XIV. down to and including XIX., are those of a different Society, and are an example of the manner in which disputes with employers may be provided for.*]

XV. Any branch having brought before them any grievance of a member, or shop, or any dispute between a member, or shop, and an employer, as to any of the existing or understood regulations of the trade, shall use every means to get the same amicably adjusted, either by conference or arbitration, and shall, if the same course has been attempted previously by the branch committee, appoint some other members to confer or arbitrate with the parties disputing; and, failing an adjustment of the matter at issue, should a cessation of work, either of the member or shop, be resolved on by the branch, the secretary shall immediately communicate the same to the E.C.

XVI. When a movement for an advance of wages, the further reduction of the hours of labour, or any other cause, is contemplated by any branch, the secretary shall report to the E.C., and state the number of paying and payable members; the number likely to require to cease from work, as nearly as possible; the state of trade in the locality; the position of the society in the district, with the votes of the branch for or against the movement, if taken on that question. Before a stoppage of

work can take place, the branch must have consulted the other branches of the society through the E.C., and the majority of the members of all the branches must have been reported as favourable, and in the branch about to stop work the votes must be two for to one against before such cessation of work can take place. Any branch acting contrary to this rule shall receive no support from the funds of the society.

XVII. Independent of the powers granted by Rule XV., branches may grant a cessation of work, with aliment off the funds of the society to any shop or squad in their locality, at any time they may consider themselves in a position to do so, without consulting the other branches of the society, in furtherance of the following objects:—Apprenticeship, overtime, reduction of the hours of labour to 57 hours per week, the conduct of parties acting contrary to or in violation of the laws of the society, or against refractory or non-members. The branch shall at once communicate full particulars to the E.C. on such a cessation of work taking place. It must, however, be understood that this power does not in any way affect or impair the powers as laid down in rule XVI., but that all the provisions therein contained remain and are in full force as though the foregoing powers were not granted. Branches to have a discretionary power in imposing fines or adopting any course that may be considered satisfactory with parties who may work in opposition to any decision of the branch or society, or who, after having been remonstrated with, continue to work in opposition or contrary to the rules of the trade. But any branch exacting an extra entrance fee, or imposing any fine or any sum of money whatsoever from members of this society when working within the locality of that branch's operations, unless such has been previously approved of and sanctioned by the society, shall be considered to have violated one of the fundamental principles of this society, and shall thereon cease to be entitled to participate in its benefits, until restitution has been made satisfactory to the society.

XVIII. Branches shall make their own bye-laws; but they must not be contrary to the general laws. Branches on joining the society shall draw up and issue through the monthly reports, for the approval of the society, the principles upon which, as branches, they mean to act as regards the questions of apprenticeship, overtime, working bye-laws, and regulations. Branches shall endeavour to get collectors appointed in all shops and squads in their locality. Collectors to receive 6d. per pound of commission.

XIX. Any branch coming to a decision on any question as to which the laws of this society are silent, shall immediately forward such decision to the E.C., for insertion in the next monthly report; and should neither the E.C. nor any other branch tender an amendment in the monthly report following that in which the branch's decision was published, said decision shall form a precedent to all other branches in cases of a similar nature.

XX. *Members requiring Legal Assistance.*¹—Should any member be prosecuted for an offence alleged to have been committed by him whilst in the discharge of his duty, he shall forward to the general secretary and his branch secretary a statement setting forth the nature of the charge preferred against him; and the general secretary shall, with the consent

¹ This rule is suited for a union of railway servants, enginekeepers, or such like.

of the standing committee, exercise such powers in the matter as, in their opinion, the case demands. Said committee may empower the general secretary to take due measures for defending such member against the charge of which he shall have been accused, by the employment of properly qualified legal assistance or otherwise, and the society shall pay the charges incurred thereby; but no member of the committee or secretary shall be personally liable in respect of such expenses.

XXI. *Establishing Branches and Election of Officers.*—Any number of persons, not less than seven, who are desirous of forming a branch in connection with this society, shall apply to the standing committee, stating their names, ages, occupations, and residences; and if the committee decide that a branch should be opened at the specified place, they shall adopt such measures as may be necessary to carry the decision into effect. Each branch of the society shall be under the government of a committee, consisting of a president, vice-president, treasurer, secretary, three trustees, and seven members, five being a quorum, who shall be elected every six months, at the same meeting as that appointed to be held for the election of members of the executive council. The committee shall hold stated meetings every three weeks. In case of a vacancy during the six months, the same shall be filled up by the branch committee. Each branch committee shall have power, from time to time, to appoint collectors and to recall their appointment. The president shall, in his branch, have the same powers and duties as the chairman of the society possesses in the executive council or the standing committee. Should both the president and vice-president be absent, the office shall be filled up by election from the members present at such meeting.

XXII. *Duties of Branch Secretary.*—The secretary of each branch shall attend all meetings of the branch. He shall have the custody of all papers, books, and documents of the branch, and keep the same in such place as the branch committee may appoint. He shall conduct all the correspondence of the branch. He shall report to the general secretary, within twenty-four hours after the election, the names and addresses of the persons elected by the branch to represent the same at the executive council board, and also the names and addresses of the persons elected office-bearers of the branch. He shall report the names and addresses of new members as soon as admitted. He shall convene all meetings either of the branch or the committee, and take minutes thereof. He shall receive and enter in the branch cash book the members' contributions, and sign the members' contribution card, or the collector's book, where the contributions have been uplifted by a collector. He shall also see that the branch treasurer enters the payments in the duplicate branch cash book kept by him. Further, he shall, one week prior to the half-yearly meetings of the branch, forward to the general secretary a statement showing the names of the members in arrear, and the amount of such arrears. He shall make out half-yearly, as on the 31st day of December and 30th day of June in each year, a balance sheet of the affairs of the branch, which shall be audited by such Auditors as the members of the branch may from time to time appoint, and as soon as audited, he shall furnish a copy thereof to the general secretary. He shall make all the returns to the Registrar as required by the Statute. He shall, on being required by four members of committee, convene a meeting of the branch committee,

or on being required by twenty members of a branch, convene a meeting of the branch.

XXIII. *Duties of the Branch Treasurer.*—The treasurer of each branch shall attend all the meetings of the society, at which any question relating to the financial affairs of the Branch is to be considered. He shall, on receiving the same from the secretary, enter in the duplicate branch cash book to be kept by him, the members' contributions. He shall, so soon as duly and legally authorised, pay the sums due to members in his branch. He shall forward to the general treasurer once every weeks a statement showing (1) the amount of his collection during the three weeks preceding, (2) the payments made by him in connection with his branch ; which statement shall be checked and verified by the secretary, who shall sign the same as correct, and at the same time he shall forward to the general secretary an exact duplicate of said statement. He shall be bound to see that all receipts for money transmitted by him to the general treasurer are countersigned by the general secretary, without which no receipt to a branch treasurer shall be valid. He shall keep the books and accounts of the branch in a clear and intelligible manner. He shall find security to the satisfaction of the committee before entering on the duties of his office.

XXIV. *Additional Duties of Branch Treasurer.*—The branch treasurer shall, along with the periodical statement referred to in Rule XXIII., remit to the general treasurer one half of the balance remaining in his hands. The other half of said balance shall be lodged in bank in name of the branch trustees, so as to be available for any immediate local demand that may arise.

XXV. *Power to declare Levy.*—Should the funds at any time be inadequate to meet the demands of the society, the executive council shall have full power to declare a levy to meet the emergency in such cases.

XXVI. *Members to give notice of Change of Residence.*—Should any member change his residence he must give notice in writing to the secretary of the branch of such removal within seven days from the date thereof ; failing so to do, he will be fined 6d. for such neglect. All letters and notices posted by the secretary to the last known place of abode of a member shall be considered sufficient. So soon as the branch secretary receives notice of a change of address, he shall advise the general secretary of such change.

XXVII. *Inspection of Books, &c.*—The books and accounts of the society, and the lists of the names of the members, shall be open for the inspection of every person having an interest in the funds of the society at all reasonable times ; and the general secretary shall be bound to furnish a copy of the list of members at any time on receiving payment for the same at the rate of 1s. for every hundred names.

XXVIII. *Power of Executive Council.*—Should any case arise not provided for by the rules of this society, the executive council shall have full power to settle the same, and their decision shall be final, unless their decision shall be set aside by a vote of the society, ascertained by virtue of the provisions of Rule VI.

XXIX. *Remuneration of Officers.*—The executive council shall have power, from time to time, to fix the remuneration of the office-bearers of society, but under no circumstances shall any remuneration be paid to any

member of the executive council or standing committee, or branch committee, unless he be elected to some other office in addition.

XXX. *Members Removing from one Branch to another.*—Should any member remove from the district of one branch to another, such member shall apply for and obtain from the secretary of the branch to which he belongs a certificate of membership, which he will present to the secretary of the branch to which he has removed, and thereafter such member shall pay his contributions to the secretary of the last mentioned branch, and it shall be the duty of the secretary of the branch which such member has left to intimate the same to the general secretary, specifying the district into which the member has removed.

XXXI. *Members in Arrear.*—Each branch secretary shall keep a special roll of members who are in arrear, which roll shall be examined by the branch committee at every meeting, and it shall be the duty of the committee to ascertain the cause of such member being in arrear. Further, said committee shall, from time to time, examine the branch secretary's books, and once every six months the same shall be formally audited as before provided.

XXXII. *Arbitration.*—Should any dispute arise between the society or its office-bearers, and any member of the society, or any person claiming through or under a member, or under the rules of the society, or the executors, administrators, or assigns of a member, or between any branch, or the office-bearers of any branch, and any member thereof, or any person claiming through or under a member, or under the rules of the society of the branch, or the executors, administrators, or assigns of any member, or between the society or its office-bearers, and any branch or the office-bearers thereof, the same shall be referred to the arbitration of two neutral persons, one to be appointed by each party with power to these members to appoint an oversman or umpire in case of their differing in opinion. Such oversman to be appointed before the arbiters proceed to consider the case. No action shall be maintainable for either party in respect of the subject-matter of such dispute or difference until the matter shall have been decided by the arbitrators or oversman or umpire, and then only for such sum as they shall award; and the award of such arbiters or oversman shall be final and binding on both parties, and shall exclude the jurisdiction of all courts of law.

XXXIII. The general treasurer and secretary shall, when required by a majority of the standing committee, and the branch treasurers and secretaries shall, when required by a majority of the branch committees respectively, pay over all moneys in their hands respectively, and assign and deliver all securities, and effects, books, papers, and property, of or belonging to the society, in their hands or custody respectively, to the general or branch trustees, as the case may be, or any other person or persons appointed by the standing committee or branch committee respectively, and it shall be no answer to such requirement on the part of such treasurers or secretaries, or any of them, that he or they has or have any claim upon the same or against the society, but he and they shall be bound absolutely and instantly to assign, pay, and deliver as aforesaid. Further, no person who keeps a publichouse or beer-shop shall be eligible for election as general treasurer or secretary, or branch treasurer or secretary.

XXXIV. Before taking upon themselves the duties of their offices, the

general treasurer and branch treasurer respectively, shall find security to the satisfaction of the executive council or the branch committee as the case may be.

XXXV. All cheques in the bank account, and all discharges of investments made in the name of the branch trustees, shall be signed by at least two of said trustees, the branch treasurer, and the chairman of the branch committee.

SICKNESS AND DEATH FUND.

XXXVI. The society shall have a fund or scheme for payment to its members of a weekly sum in case of sickness, and of a sum in case of the death of a member, or his wife, or his mother if a widow. Any one may be a member of this scheme who is a member of the (*name of the Trade Union*), and no others. No person shall be admitted a member of the sickness and death fund unless he is proposed and seconded, and is elected by a majority of the members present at any of the regular or special meetings of the branch of the place where he receives his pay for the time. Any member who shall cease to be a member of (*name of the Trade Union*) shall *ipso facto* cease to be entitled to the benefits of this scheme.

XXXVII. Every member of the sickness and death fund shall contribute regularly to its funds, and that according to either of two scales, A or B, hereinafter described. Contributors, according to scale A, shall pay at the rate of per week, and contributors, according to scale B, shall pay at the rate of per week, said sums shall in each case be payable three-weekly. In addition to said contributions, each member shall pay on joining the scheme, in name of entry-money, in the case of contributor according to scale A; in the case of a contributor according to scale B. After "the society" shall have been registered twelve months, the payments in respect of entry-money shall be for scale A, and for scale B. Should a member desire to be transferred from the one scale to the other, he must make an application in writing to the branch secretary, who shall submit it to the next ensuing meeting of the branch, and such meeting shall have power to grant or refuse the application. In case of a member being transferred from scale A to scale B, no portion of his contributions shall be repaid to him.

XXXVIII. In consideration of said payments, and compliance otherwise with the rules, members shall be entitled to the following benefits, viz.:—every member enrolled, and contributing under scale A, shall be entitled to the following payments: (1), of a sum at the rate of per week when he shall be unfit for work in consequence of sickness, ill-health or physical injury; (2), of the sum of in the event of the death, during his own lifetime, of his wife; (3), of the sum of in the event of the death, during his own lifetime, of his mother, but that only in case she shall be a widow (declaring that should such mother have more than one son a member of "the scheme," there shall be only one payment of exigible in respect of her death, and the same shall be paid to the sons equally); (4), of a sum of in the event of the member's own death. Members enrolled and contributing, under scale B, shall be entitled to payments amounting to one half of those above specified as applicable to scale A, but is hereby declared that no member shall be entitled to benefit

unless he shall have been at least six months a member of "the scheme."

XXXIX. No member shall be entitled to receive any payment in respect to the death of his wife or mother unless he shall have been at least twelve months a member of the scheme.

XL. Members who from any of the causes specified in Rule V. are rendered unable to follow their usual vocation for the space of three consecutive working days, shall be entitled to aliment from the funds at the respective rates before provided, but no allowance shall be made when the inability to work shall be of shorter duration. Each claim shall be made in the following manner, viz. :—The applicant within three days of his being absent from work shall send to the branch secretary a note in the terms following or similar terms :—"I declare that I am unable to work, and claim aliment from the society in terms of the rules." Immediately on receipt of such intimation the branch secretary shall cause the member so claiming to be visited by two members of the branch committee, and that within four days at latest, and the said members of committee shall immediately report the result of their visit to the branch committee. Should they report that it is a proper case for payment of aliment the same shall be paid from the date of his ceasing to work, but in no case for more than three days prior to receipt of the application. Should they be unable to report that it is a proper case for payment of aliment, the applicant shall be visited by a registered medical practitioner appointed and paid by the branch committee, who shall report to said committee whether or not the applicant is entitled to aliment. Should said report be in favour of granting aliment the same shall be paid as above provided, but should the report be against granting aliment the same shall not be paid. In the latter case, however, the applicant shall, if he consider himself aggrieved, be entitled to have the question determined by arbitration, as hereinbefore provided. The branch committee shall at any time, while a member is receiving aliment, cause him to be visited either by two of their own number or a medical practitioner, and may from time to time reconsider the case and grant or refuse the continuance of aliment in the same way, and subject to the same conditions as at the original granting of aliment. Every member receiving aliment must within three days after his recovery send notice to the branch treasurer in the following or similar terms :—"I am now fit for work and no longer claim aliment." Any member neglecting to do so, and who shall have received aliment after his recovery, shall be bound to repay such aliment, and shall, in addition, be liable to a fine not exceeding two pounds ; and should it appear to the branch committee that the neglect has been wilful, so as to obtain aliment after being fit for work, he may be expelled the society, or otherwise dealt with as their branch committee may determine. Payment of aliment shall be made under deduction of all arrears of contributions and current contributions.

XLI. All aliment shall be suspended or refused during the discretion of the branch committee if the member claiming or receiving aliment shall at any time refuse to be seen by any two members of committee or a medical practitioner, or should he refuse to answer such questions as it may be deemed necessary to ask, or if he be guilty of any wilful

misconduct to delay the recovery of his health, or if he leaves home for more than one day without the sanction of the branch secretary.

XLII. Any member nine weeks in arrears shall be suspended from benefit and shall not be again a member in benefit to any effect whatever until the expiry of four weeks from the date when his arrears shall have been fully paid up. Any member who shall be fifteen weeks in arrears shall cease to be a member of the society, but notwithstanding it shall be in the power of the society to compel such member to pay up his arrears and contributions for three months following, unless he shall have given notice as after-mentioned.

XLIII. Any member desirous of ceasing to be a member of this scheme must give three months' notice of his intention so to do. He shall be entitled to benefit during the running of such notice, but not after its expiry, and should he wish to continue after expiry of said three months he must make application to the branch committee, who may admit or refuse the application as they think fit.

XLIV. On the death of the wife, or the mother being a widow, of a member, such member shall, along with the application for payment of the benefit hereinbefore provided, produce to the branch secretary an extract of the death of such wife or mother from the register of deaths, along with a declaration signed by the member applying in the following or similar terms:—"I declare that (A. B.) named in the accompanying certificate was my (wife, or mother who was a widow, as the case may be), and that she died on the date therein named." The branch secretary, if he is thoroughly satisfied of the accuracy of the statement, in said extract and declaration, shall immediately transmit the same to the treasurer, who shall pay the sum due without delay. Should the branch secretary, however, not be satisfied of the accuracy of said statements, he shall bring the same before the branch committee, who shall deal with the same as they think just.

XLV. Within three months of his joining the scheme, every member shall deliver to the branch secretary a writing, (which shall be valid if signed by him, without further authentication; or, should he be unable to write, if he adhibit his mark thereto, in presence of two witnesses, who shall sign the same in verification thereof), setting forth the name or names of the person or persons to whom, in the event of his death, the sum due in respect thereof shall be payable. But he shall have power from time to time to recall such nomination, and substitute the name of such other person or persons as he may think proper. Said writings shall be carefully preserved by the branch secretary, and he shall keep a roll showing the date when such nominations were delivered to him, the name of the nominee, and the name of the member making the nomination.

XLVI. On the death of a member, the person nominated to receive the amount due in respect of such death shall, along with the application for payment, produce to the branch secretary an extract of the death of such member from the register of deaths, and a declaration signed by him in the following or similar terms:—"I declare that A. B., named in the accompanying extract, was a member of the Amalgamated Society

The branch secretary shall thereupon deal with the claim in the same way as is hereinbefore provided,

with reference to a claim by a member in respect of the death of his wife or mother.

XLVII. In case no such nomination shall be made as that provided for by Rule XLV. hereof, the society shall pay the amount accruing on the death of a member to such relatives as are entitled to succeed to the deceased according to law, but in case there shall be no such relatives, the sum accruing, as aforesaid, or so much of it as is necessary, shall be applied by the branch committee at the sight of one or more of their own number, in the first place, in decently interring such member's remains, and should any balance remain, the same shall, in the option of the branch committee, be applied to the general purposes of the society, or paid over to such relatives or connections as to them may seem proper, such payments, however, being entirely left to the discretion of said committee.

XLVIII. When the branch secretary, treasurer, or committee shall, in good faith, have paid the respective sums accruing under these rules to the person or persons who in their opinion was entitled to receive the same, the society shall be in no wise responsible in re-payment thereof to any person or persons, even although such sums shall have been paid by mistake, or upon inaccurate information. No action or proceeding shall lie at the instance of any parish or union officer, or parochial board, for any sum due or claimed in respect of the sickness or death of a member, or of his wife or mother.

XLIX. The branch treasurer shall, along with the three-weekly statement referred to in Rule XXIII., remit to the general treasurer one-half of the amount received from members in name of entry-money. The balance in his hands shall be lodged by him in bank, or otherwise invested in accordance with these rules, in name of the branch trustees. No branch treasurer shall retain in his own hands more than £5, but shall be bound whenever the same exceeds that sum to lodge the excess in bank in name of the branch trustees. Separate treasurers' books, as also separate members' contribution books and cards, shall be kept for the transactions of "the scheme" and Society, but they shall be similar in form, and kept and checked in a manner similar to that provided by Rule XXIII.

L. Once every six months, and that as on the 31st day of December and 30th day of June in each year, each branch treasurer shall make up a complete statement of his intromissions with the sickness and death fund for the preceding half year, which shall be first checked by the branch secretary, and then audited by two members of the branch committee appointed by said committee for that purpose, and who shall sign the same as correct. The branch treasurer shall thereupon transmit the account so audited to the general treasurer, who shall examine the same, and who shall, if he think fit, be entitled to call for explanations thereof, and the exhibition of such books or documents as he may deem necessary. Such statements shall be made up, checked, audited, and transmitted within one month from the respective dates above mentioned. Immediately thereafter, and prior to the meeting of delegates mentioned in the next succeeding rule, the general treasurer shall make out an abstract statement, showing the precise condition of the various branches and of the society generally, which shall be verified by the general secretary.

LI. Once every six months, and within two months at least after the respective dates mentioned in the immediately preceding rule, the

delegates shall meet for the purpose of considering the statements furnished by the respective branch treasurers, and the abstract statement of the general treasurer, and the conditions of the funds throughout the various branches. Such meeting of delegates shall thereupon have power to require any branch treasurer (and on his being required by them, the branch treasurer shall be bound to comply with the requirements) to remit such portion of the funds which may be in his hands, or which may have been invested or put in bank in the name of the branch trustees (so soon as the same can be realised) to the general treasurer; and such meeting shall also have power to require the general treasurer (and which requirement he shall be bound to comply with) to remit any sums in his hands, or which may be in bank in name of the general trustees, to such branches as they may deem needful—the object being to equalise as much as possible the funds of the society in the hands of the various branches, so that the same may be available for meeting most readily the claims of members in the respective branches.

LII. The funds of each branch in the hands of the branch treasurer shall, so soon as the same exceeds the sum of £5, be invested in name of the branch trustees in one or other of the following ways, viz.:—in a savings' bank, or in the public funds, or with the Commissioners for the reduction of the National Debt, or upon Government, or real or heritable securities in Great Britain or Ireland, or upon debentures, or mortgages, or securities of any company incorporated by charter or Act of Parliament and paying a dividend, or upon the security of any county, burgh, or other rates authorized to be bonded or mortgaged by Act of Parliament. The trustees shall, immediately after investing the money, deliver the security for such investment to the treasurer of the branch for the time being. No money shall be withdrawn without the consent of the branch committee, and the president of the branch for the time being shall attend with the trustees at the time of withdrawal. Should any trustee or other officer take any sum of money from the funds with which he may be intrusted, and appropriate the same to his own use, or otherwise dispose of it without authority, he shall be expelled the society, and be proceeded against according to law.

IX.

Proceedings in an Application for Registration of Alterations of the Rules of a Registered Trade Union.

Since the preceding pages of this work were in type, a set of Regulations and forms for the registration of alterations of rules by the Home Secretary has been promulgated, proceeding upon the same construction of the Act as that set forth in sect. 33, *supra*. These regulations and forms must be followed by all registered trade unions desirous of securing the benefits of the Act.

The alterations having been adopted by the society in accordance with the rules on the subject, an application for registry must be signed by

seven members duly authorized by a resolution of the society, and transmitted to the Registrar. The form of the application is different according as the alteration is a partial one, or is a complete alteration consisting of an entire set of rules to be substituted for the existing set of rules. In either case it is to be accompanied by a declaration in the manner prescribed by 6 & 7 William IV. cap. 62, to the effect that in making the alteration the rules of the trade union have been duly complied with.

In the case of a partial alteration, the application must be accompanied by two copies of the new rule or alteration and two copies of the old rules in the place of which it is to stand, each copy of the new rules being marked O, and signed by the applicants.

In the case of a complete alteration or substitution of a new set of rules, two printed copies of the new set of rules are to be sent, marked P, and signed by the applicants.

In both cases the Registrar's duty is to ascertain that the requirements of the Act are complied with in the rules as altered (see above, sects. 28-36); and if they are complied with to grant a certificate in the form appointed by the regulations for a complete or partial alteration as the case may be.

The regulations and relative forms are given below :—

- (1.) *Regulations by Secretary of State under the Trade Union Act relative to the Registry of Alteration of Rules, signed Aug. 18, 1873.*

TRADE UNION ACT, 1871, 34 & 35 VICT. c. 31.

In pursuance of the powers vested in me by the above mentioned Act, I, the Right Honourable Robert Lowe, one of Her Majesty's Principal Secretaries of State, make the following regulations with respect to the registration of alterations of rules of a trade union :—

1. An application may be made at any time on behalf of a trade union to the Registrar for the registration of an alteration of rules.

2. The alteration to be registered may be either :—

A partial alteration, consisting of a new rule or rules to be added to the registered rules or to be substituted for any of the registered rules ;

or, a complete alteration, consisting of an entire set of rules to be substituted for the set of registered rules.

3. An application for the registration of a partial alteration of rules must be in the form M, annexed hereto, and must be accompanied—

(a) By a statutory declaration (in form Q, annexed hereto) of an officer of the trade union to the effect that, in making the alteration of rules submitted for registration, the rules of the trade union have been duly complied with ; and

(b) By two copies of the new rule or rules proposed to be added, or as the case may be, by two copies of the new rule or rules proposed to be substituted, and two copies of the old rules in the place of which such substitution is to be made. Each copy

of the new rules must be marked O, and signed by the applicants.

The Registrar, before registering the new rule or rules to be added or substituted, as the case may be, shall ascertain that the rules of the trade union, if altered in accordance with the proposed partial alteration, will provide for all the matters required by the above mentioned Act to be provided for by the rules of a registered trade union.

The certificate of registry of a partial alteration shall be in form N annexed hereto, and shall be delivered to the applicants, attached to one of the copies of the new rule or rules, on payment of 10s.

4. An application for the registration of a complete alteration of rules must be in the form X, annexed hereto, and must be accompanied—

- (a) By a statutory declaration in form Q, annexed hereto, of an officer of the trade union to the effect that, in making the alteration of rules submitted for registration, the rules of the trade union have been duly complied with; and
- (b) By two copies of the new set of rules. Each copy of the rules must be printed, and be marked P, and signed by the applicants.

The Registrar, before registering the new set of rules, shall ascertain that the new set of rules provides for all the matters which, by the above mentioned Act, are to be provided for by the rules of a registered trade union.

The certificate of registry of a complete alteration of rules shall be in the form Y, annexed hereto, and shall be delivered to the applicants, attached to one of the copies of the new set of rules, on payment of 10s.

R. LOWE,

One of Her Majesty's Principal Secretaries of State.

WHITEHALL, 18th August 1873.

Q.

(2.) *Declaration to be made by the Secretary of a Trade Union in applying for Registry of Alterations of Rules.*

TRADE UNION ACT, 34 & 35 VICT. c. 31.

————— Trade Union. Register No. ———.

I, _____ of _____
the clerk [or secretary or one of the officers] of the above mentioned trade union, do solemnly and sincerely declare that in making the alterations of the rules of the said trade union, the application for the registration of which is appended to this declaration, the rules of the said trade union have been duly complied with.

And I make this solemn declaration, conscientiously believing the same to be true, and by virtue of the provisions of an Act made and passed in

the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the present Sessions of Parliament, intituled 'An Act for the more effectual abolition of oaths and affirmations taken and made in various departments of the state, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits; and to make other provisions for the abolition of unnecessary oaths.'"

Taken and received before me, one
of Her Majesty's Justices of the
Peace for the said county of
at
in the said county, this
day of
18 .

M.

(3.) *Form of Application for Registry of Partial Alteration of Rules.*

———— Trade Union. Register No. ———.

1. This application is for the registry of a partial alteration of the rules of the trade union, and is made by the seven persons whose names are subscribed at the foot hereof.

2. The partial alteration submitted for registration consists of the addition of the rule or rules, two copies whereof accompany this application (each copy being marked O and signed by the applicants), in addition to the rules already registered

or, the substitution of the rule [or rules], two copies whereof accompany this application (each copy being marked O and signed by the applicants), for No. and No. of the rules already registered.

3. This application is accompanied by a statutory declaration of an officer of this trade union, to the effect that in making the alteration of rules now submitted for registration the rules of the trade union were duly complied with.

4. We have been duly authorised by the trade union to make this application on its behalf, such authorization consisting of a resolution passed at a general meeting on the day of

Signed 1.

2.

3.

4.

5.

6.

7.

day of

18

To the Registrar of Friendly Societies, Abingdon Street, Westminster,
(Edinburgh, or Dublin, as the case may be).

Here insert the date, or, if there was no such resolution, state in what other way the authorization was given.

Here insert the date.

(4.) *Form of Application for Registry of Complete Alteration of Rules.*

_____ Trade Union. Register No. _____.

1. This is an application for the registration of a complete alteration of the registered rules of the _____ trade union, and is made by the seven persons whose names are subscribed at the foot hereof.

2. The complete alteration submitted for registration is the substitution of the set of rules, two printed copies of which (each copy marked P and signed by the applicants) accompany this application, for the set of rules already registered.

3. The name under which it is proposed that the trade union on behalf of which this application is made, shall be registered, is _____ set forth in rule No. _____.

To the best of our belief there is no other existing trade union, whether registered or not registered, the name of which is identical with the proposed name or so nearly resembles the same as to cause confusion.

Name of trade union. 4. The place of meeting for the business of the _____ and the office to which all communications and notices may be addressed is at _____ as set forth in rule No. _____.

Name of trade union. 5. The _____ was established on the _____ day of _____.

Name of trade union. 6. The whole of the objects for which the _____ is established and the purposes for which the funds thereof are applicable are set forth in rule No. _____.

7. The conditions under which members may become entitled to benefits assured are set forth in rule No. _____.

8. The fines and forfeitures to be imposed on members are set forth in rule No. _____.

9. The manner of making, altering, amending, and rescinding rules is set forth in rule No. _____.

10. The provision for the appointment and removal of a general committee of management, of trustee or trustees, treasurer, and other officers, is set forth in rule No. _____.

11. The provision for the investment of funds and for the periodical audit of accounts is set forth in rule No. _____.

12. The provision for the inspection of the books and names of the members by every person having an interest in the funds is set forth in rule No. _____.

13. This application is accompanied by a statutory declaration of _____ an officer of the said trade union to the effect that, in making the alteration of rules now submitted for registration, the rules of the trade union were duly complied with.

14. We have been duly authorised by the _____ trade union to make this application on its behalf, such authorization con

sisting of a resolution passed at a general meeting held on the
day of *

(Signed)

- 1.
- 2.
- 3.
- 4.
- 5.
- 6.
- 7.

* Here insert the date, or, if there was no such resolution, state in what other way authorization was given.

The Registrar of Friendly Societies, 28 Abingdon Street, Westminster,
S.W. (or Edinburgh or Dublin as the case may be).

day of

18

(5.) *Forms of Certificates.*

N————— Trade Union. Register No. ———.

Certificate of registry of partial alteration of rules.

I hereby certify that the rules, copy whereof is appended hereto, have
been registered under the above mentioned Act in addition to the rules
already registered [or in substitution for No. ——— and No. ———
of the rules already registered] for the ——— trade union.

(Signed)

Registrar of Friendly Societies in (England or
Scotland as the case may be).

day of

18

Y————— Trade Union. No. ———.

Certificate of registry of complete alteration of rules.

I hereby certify that the set of rules, copy whereof is appended hereto,
has been registered under the above mentioned Act in substitution for the
set of rules already registered for the ——— trade union.

(Signed)

Registrar of Friendly Societies in (England or
Scotland as the case may be).

day of

18

X.

CRIMINAL LAW AMENDMENT (VIOLENCE, THREATS, ETC.) ACT. 34 & 35
VICT. CAP. 32.

*An Act to amend the Criminal Law relating to Violence, Threats,
and Molestation.*

[29th June, 1871.]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Penalty for
threats,
molesta-
tions and
obstruc-
tion.

1. Every person who shall do any one or more of the following acts, that is to say,

- (1.) Use violence to any person or any property,
 - (2.) Threaten or intimidate any person in such manner as would justify a justice of the peace, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace,
 - (3.) Molest or obstruct any person in manner defined by this section, with a view to coerce such person,—
 - (1) Being a master to dismiss or to cease to employ any workman, or being a workman to quit any employment or to return work before it is finished ;
 - (2) Being a master not to offer, or being a workman not to accept any employment or work ;
 - (3) Being a master or workman to belong or not to belong to any temporary or permanent association or combination ;
 - (4) Being a master or workman to pay any fine or penalty imposed by any temporary or permanent association or combination ;
 - (5) Being a master to alter the mode of carrying on his business, or the number or description of any persons employed by him,
- shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months.

A person shall, for the purposes of this Act, be deemed to molest or obstruct another person in any of the following cases ; that is to say,

- (1) If he persistently follows such person about from place to place ;
- (2) If he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof ;
- (3) If he watch or beset the house or other place where such person resides or works, or carries on business, or happens to be, or the approach to such house or place, or if with two or more other persons he follow such person in a disorderly manner in or through any street or road.

Nothing in this section shall prevent any person from being liable under any other Act, or otherwise, to any other or higher punishment than is provided for any offence by this section, so that no person be punished twice for the same offence.

Provided that no person shall be liable to any punishment for doing or conspiring to do any act on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing as hereinbefore mentioned.¹

Legal Proceedings.

2. All offences under this Act shall be prosecuted under the provisions of the Summary Jurisdiction Acts.

Provided as follows :—

1. The "Court of Summary Jurisdiction," when hearing and determining an information or complaint, shall be constituted in some one of the following manners ; (that is to say),

Summary proceedings for offences, penalties, &c.

(a) In England.

(i) In any place within the jurisdiction of a metropolitan police magistrate or other stipendiary magistrate, of such magistrate or his substitute :

(ii) In the city of London, of the Lord Mayor or any alderman of the said city :

(iii) In any other place, of two or more justices of the peace sitting in petty sessions.

(b) In Scotland, of the sheriff of the county or his substitute.

(c) In Ireland.

(i) In the police district of Dublin metropolis, of a divisional justice.

(ii) In any other place, of a resident magistrate.

2. The description of any offence under this Act in the words of such Act shall be sufficient in law.

3. Any exception, exemption, proviso, excuse, or qualification, whether it does or not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information, and if so specified or negatived no proof in relation to the matters so specified or negatived shall be required on the part of the informant or prosecutor.²

3. In England and Ireland, if any party feel aggrieved by any order or conviction made by a court of summary jurisdiction on determining any complaint or information under this Act, the party so aggrieved may appeal therefrom, subject to the conditions and regulations following :

Appeal to quarter sessions in Great Britain.³

- (1) The appeal shall be made to some court of general or quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days and not more than four months after the decision of the court from which the appeal is made.

- (2) The appellant shall, within seven days after the cause of appeal has arisen, give notice to the other party and to the court of

¹ This section is founded on the Combination Act of 1825 (6 Geo. IV. c. 129, s. 3), with amendments.

² This section is nearly the same as sec. 19, of the Trade Union Act, p. 62.

³ The side note is incorrect. The section relates to England and Ireland only.

summary jurisdiction of his intention to appeal, and of the ground thereof:

- (3) The appellant shall immediately after such notice enter into a recognizance in the sum of ten pounds before a justice of the peace, with two sufficient sureties in the sum of ten pounds, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court:
- (4) Where the appellant is in custody the justice may, if he think fit, on the appellant entering into such recognizance as aforesaid, release him from custody:
- (5) The court of appeal may adjourn the appeal, and upon the hearing thereof they may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just, and, if the matter be remitted to the court of summary jurisdiction, the said last-mentioned court shall thereupon re-hear and decide the information or complaint in accordance with the opinion of the said court of appeal. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.¹

Appeal in Scotland as prescribed by 20 Geo. II. c. 43.

4. In Scotland it shall be competent to any person to appeal against any order or conviction under this Act to the next Circuit Court of Justiciary, or where there are no Circuit Courts to the High Court of Justiciary at Edinburgh, in the manner prescribed by and under the rules, limitations, conditions, and restrictions contained in the Act passed in the twentieth year of the reign of His Majesty King George the Second, chapter forty-three, in regard to appeals to Circuit Courts in matters criminal, as the same may be altered or amended by any Acts of Parliament for the time being in force.²

All offences under this Act shall be prosecuted by the procurator-fiscal of the county.

Interested person not to act, 6 Geo. IV., c. 129, s. 13.

5. A person who is a master, or father, son, or brother of a master, in the particular manufacture, trade, or business in or in connection with which any offence under this Act is charged to have been committed shall not act as or as a member of a court of summary jurisdiction or appeal for the purposes of this Act.³ (secs. 40, 44.)

Definitions.

Definition of "Summary Jurisdiction Acts."

6. In this Act—

The term Summary Jurisdiction Acts shall mean as follows:

As to England, the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales

¹ This section is the same with sec. 20, of the Trade Union Act, page 62.

² The first portion of this section is the same with the first portion of sec. 21, of the Trade Union Act, page 63.

³ This section is the same with sec. 22, of the Trade Union Act, page 63.

"with respect to summary convictions and orders," and any Acts amending the same:

As to Scotland, "The Summary Procedure Act, 1864 ;"

As to Ireland, within the police district of Dublin metropolis, the Acts regulating the powers and duties of justices of the peace for such district, or of the police of such district, and elsewhere in Ireland, "The Petty Sessions (Ireland) Act, 1851," and any Act amending the same.¹

7. The Acts mentioned in the schedule to this Act are hereby repealed to the extent in the third column of that schedule mentioned :

Provided that this repeal shall not affect—

- (1) Anything duly done or suffered under any enactment hereby repealed ;
- (2) Any right or privilege acquired or any liability incurred under any enactment hereby repealed ;
- (3) Any penalty, forfeiture, or other punishment incurred in respect of any offence against any enactment hereby repealed ;
- (4) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing, recovering or imposing any such liability, penalty, forfeiture, or punishment as aforesaid.

Repeal of
Acts in
schedule as
herein
stated.

SCHEDULE.

Session and Chapter.	Title.	Extent of Repeal.
6 Geo. IV., c. 129.	An Act to repeal the laws relating to the combination of workmen, and to make other provisions in lieu thereof.	The whole Act.
22 Vict. c. 34.	An Act to amend and explain an Act of the sixth year of the reign of King George the Fourth to repeal the laws relating to the combination of workmen, and to make other provisions in lieu thereof. ²	The whole Act.
24 & 25 Vict. c. 100.	An Act to consolidate and amend the statute law of England and Ireland relating to offences against the person.	Section forty-one.

¹ This section corresponds, except as regards Scotland, with the definition in sec. 23, of the Trade Union Act, page 63.

² The two statutes repealed are those known as the Combination Acts.

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